

## MARTYRDOM, SUICIDE, AND THE ISLAMIC LAW OF WAR: A SHORT LEGAL HISTORY

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### INTRODUCTION

Religion is the mother of war. Conflicts involving religion are among the most intractable of human disputes. Yet, until recently, wars motivated or influenced by religious ideologies have been confined to small well-defined theaters. Europe's Thirty Years War, which ended in 1648, appears to be the only exception in the modern history of warfare.<sup>1</sup> Indeed, in the last three millennia the world has seen much war but it has not seen a full-scale religious war of global proportions since the end of the Crusades.

There is reason to believe that this state of affairs is about to change. The horrific attacks on the World Trade Center and the Pentagon on September 11, 2001, as well as the Western military incursion in Afghanistan, the invasion and conquest of Iraq, and continuing Islamist guerilla attacks and terrorist violence against military and civilian targets in a variety of countries with significant Muslim populations makes one wonder whether the West<sup>2</sup>

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1. I am indebted to William E. Nelson for this observation.

2. The terms "West" and "Western" are intended to describe those governments

may indeed be plunging into a protracted religious war with the Islamic world.<sup>3</sup>

Whether or not this is true, it is clear that militant Islam presents profound and difficult challenges for Western political and legal systems. Concomitantly, the Islamic world confronts its own significant challenges from both within and without. Muslims seem to be in great turmoil and despair, deeply troubled by the perceived marginalization and demonization of Islamic ideas and norms in Western discourse and by the Arab world's glaring failure to achieve significant progress in scientific, technological, and political realms.<sup>4</sup> There is also deep, widespread anger among Muslims over the subordination, humiliation, and physical subjugation of certain Muslim communities, especially the Palestinian people in the West Bank and Gaza, known today as the Occupied Territories.<sup>5</sup>

Classical Islamic juridical-religious doctrine dictates that when non-Muslim adversaries seriously threaten Islam or Muslim communities — because of their Islamic identity — Muslims are entitled to go to war to defend their religion, the community, and the *Dar al-Islam*.<sup>6</sup> This kind of war, arguably the only kind of

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and communities that trace the origins of their jurisprudential, political, philosophical, and sociological systems of thought back to the events that we now describe as the European "Enlightenment." See, e.g., Crane Brinton, *Enlightenment*, in THE ENCYCLOPEDIA OF PHILOSOPHY 519-35 (Paul Edwards ed., Macmillan Publishing Co. 1972) (1967) (describing the "Enlightenment" as a "broad designation for a historical period, roughly the eighteenth century" that involved the popularization in Europe of social contract theory, "natural rights," and the prestige of natural science, and an emphasis on reason, conceptions of the public good, and progress).

3. See, e.g., Michael Scott Doran, *Somebody Else's Civil War*, FOREIGN AFFAIRS, Jan.-Feb. 2002, at 22 (suggesting that the war between the United States and Al Qaeda is actually between the *salafiyya* [Muslims seeking a return to the original Islamic practice] and U.S.-supported secularists, and that the United States may be drawn into that war with potentially disastrous consequences); see also SAMUEL P. HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER 209-18, 312-18 (1996) (suggesting possibility of a global war between the West and the Islamic world).

4. See, e.g., U.N. DEVELOPMENT PROGRAMME, ARAB HUMAN DEVELOPMENT REPORT: CREATING OPPORTUNITIES FOR FUTURE GENERATIONS, U.N. Sales No. E.02.III.B.9 (2002). This sociological study, employing several leading Arab social scientists, concludes that the Arab world greatly lags behind all others in three critical areas: political freedom, access to knowledge, and advancement of the status of women. See also *Special Report: Arab Development: Self-doomed to Failure*, THE ECONOMIST, July 4, 2002, at 24.

5. See, e.g., Don Oldenburg, *For Palestinians Here, the Ring of Fear; Anxiety Mounts as Calls Home Go Unanswered*, WASH. POST, Apr. 25, 2002, at C1.

6. Literally, "the abode of Islam" or "the abode of peace." Classical Muslim jurists divided the world into two parts: "the abode of Islam" [*Dar al-Islam*] and "the abode of war" [*Dar al-Harb*]. See MAJID KHADDURI, WAR AND PEACE IN THE LAW OF ISLAM 52

war permitted by Islamic law,<sup>7</sup> is described in the classical sources as an important variety of the religious obligation of *jihad*.<sup>8</sup>

The Prophet Muhammad taught that there are two kinds of *jihad*. The “greater *jihad*” [*jihad al akbar*] involves the individual’s constant and eternal struggle with the evil and immoral aspects of the self. This was said by the Prophet to be much more important than the “lesser *jihad*” [*jihad al asgar*] which includes, *inter alia*, the military struggle by Muslims collectively seeking to defend the religion or the community. It is the notion of the “greater *jihad*,” with its emphasis on justice, rectitude, fidelity, integrity, and truth that gives the concept of *jihad* its profound meaning in Islamic theology and law. This attitude pervades the entire theory of Islamic law toward all lesser *jihadist* behavior, including the military *jihad*, and the level of intention and purpose required of the believer in discharging his or her *jihad* obligations.

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(1955); ERWIN I.J. ROSENTHAL, *POLITICAL THOUGHT IN MEDIEVAL ISLAM: AN INTRODUCTORY OUTLINE* 24 (Cambridge University Press 1962) (1958); A. Abel, *Dar al Islam*, 2 *ENCYCLOPAEDIA OF ISLAM* 127 (B. Lewis et al. eds., 1965). [hereinafter *in EI2*]. In the classical view, the term *Dar al-Islam* describes those places in the world where the Shari’ah, the corpus of Islamic law, prevails and is enforced. Every other place in the world, except those places where a peace treaty with the Muslims is in place, is part of the *Dar al-Harb*. This partition flowed from a pan-Islamic vision, developed during the formative period in Islamic history, that all of the world eventually would be brought under Islamic sovereignty. The vision contemplated a non-Muslim world that was presumed to be hostile to Islam. The tremendous increase in the number of Muslims now living in relative peace and prosperity in pluralist and tolerant secular societies in the West and in the Far East throws the utility of the classical Islamic view of the world into some doubt.

7. See KHADDURI, *supra* note 6, at 62; see also E. Tyan, *Djihad*, *in EI2*, *supra* note 6, at 538.

8. The concept of *jihad* [literally “struggle,” “striving,” or “exertion in pursuit of a goal”] has a much more profound meaning in Islamic terms than in the reductionist sense — connoting religious war or “holy war” — current in the West. Nonetheless, the term has long been used, in scholarly discourse and in everyday parlance, both in the Islamic world and in the West, as a fairly apt description of efforts by Muslims to use military methods, including war and violence, to advance or defend their religious values, goals, and objectives. When the word *jihad* is used in this narrower sense, it is more accurate to refer to it as a “military *jihad*.” See, e.g. Colin Nickerson, *Not Easy to Define “Jihad”*, MILWAUKEE J. SENTINEL, Oct. 1, 2001, available at [www.jsonline.com/news/editorials/oct01/nickerson14101301.asp](http://www.jsonline.com/news/editorials/oct01/nickerson14101301.asp); JACOB NEUSNER & TAMARA SONN, *COMPARING RELIGIONS THROUGH LAW* 206-13 (1999) (noting the distinction between “military jihad” and “jihad”). For a comprehensive look at the meanings and distortions of *jihad*, see HIKMI M. ZAWATI, *IS JIHAD A JUST WAR?: WAR, PEACE, AND HUMAN RIGHTS UNDER ISLAMIC AND PUBLIC INTERNATIONAL LAW* (2001).

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It is important to understand that Islam is not just a religion and a system of theological thought. It is also a system of jurisprudence, one that finds its primary sources in religious texts and uses those texts to create legal norms, obligations, prescriptions, and prohibitions for its adherents to live and govern themselves by. All forms of *jihad*, including the “military *jihad*,” are, therefore, complex clusters of such norms, obligations, prescriptions, and prohibitions.

The “military *jihad*” is expressly authorized by the Qur’an:

To those against whom war is made, permission is given [to fight], because they are wronged — and verily, Allah is Most Powerful for their aid — [They are] those who have been expelled from their homes in defiance of right — [for no cause] except that they say, ‘Our Lord is Allah.’<sup>9</sup>

This verse is the genesis of the concept of the military *jihad*. It clearly offers normative justification to Muslims for waging war in the exercise of the collective right of self-defense and it brings the Islamic conception of defensive war into close alignment with traditional Western “Just War” doctrine.<sup>10</sup> This verse and a number of other revelations that followed it, together with the normative example of the Prophet Muhammad’s behavior in war, are the bases for the development of an extensive body of Islamic law authorizing military *jihad* in a variety of circumstances.

This Article is concerned with one key aspect of the law of the military *jihad*: the Islamic concept of martyrdom [*shahada* or *istishhad*]. The topic is of great interest now because of its use as an ideological and mobilizing tool by military *jihadists* promoting self-annihilatory acts of violence.<sup>11</sup> These acts are currently being used by *jihadists* in support of the Palestinian liberation struggle<sup>12</sup> and also in support of efforts by Al Qaeda and other

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9. THE MEANING OF THE HOLY QUR’AN 832 (Abdullah Yusuf Ali trans., 10th ed. 2001) (1934) (translating QUR’AN, verse 22:39-40). The verses that give the Muslim believers permission to fight their enemies were revealed to the Prophet Muhammad after he and his followers, seeking to live in peace, emigrated from Mecca to Medina and the Meccans continued to persecute and make war on them.

10. KHADDURI, *supra* note 6, at 57-59.

11. “Suicide bombings” or “martyrdom operations,” depending on whose rhetoric one adopts.

12. The three main *jihadist* organizations involved in this struggle are Hamas (in Arabic, an acronym for “*Harakat Al-Muqawama Al-Islamiyya*” [Islamic Resistance Move-

*jihadist* organizations<sup>13</sup> to advance what they claim to be an Islamic agenda. Even though the Islamist use of self-annihilation as a *jihadist* tool may be a relatively new methodology, the theological underpinnings for this methodology are not new. In fact, the Islamic religion has a long and rich martyrological tradition. It is this tradition that is at the core of current normative and legal justifications offered by military *jihadists* in support of self-annihilatory violence.

This Article will demonstrate that the current Islamist financing and systematic organization and direction of self-annihilatory acts of violence is only weakly supported, if at all, by the classical sources on martyrdom in Islamic law and jurisprudence. The Article will show that current justifications for self-annihilatory violence are instead the result of a major reinterpretation of the theology and religious law on martyrdom and the military *jihad* advanced by Shi'ite<sup>14</sup> theologians and jurists in Iraq and

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ment] and a word meaning courage and bravery), Palestinian Islamic Jihad, and the Al Aqsa Martyrs Brigade. See, e.g. *End of the Road Map?*, WASH. TIMES, Sept. 8, 2003, at A18.

13. These organizations include, inter alia, The Battalion of Kamikaze Shahid, the Congress of Peoples of Ichkeria and Dagestan and the United Force of Caucasian Mujahideen (Chechnya and Dagestan); Abu Sayyaf (Phillipines); Jaish-e-Mohammad (Kashmir); and Dar ul-Islam, the Islamic Defender's Front, Laskar Jihad and Jema'ah Islami'ah (Indonesia). See *U.S. to Blacklist Chechen Groups*, BBC NEWS, Feb. 21, 2003, at <http://news.bbc.co.uk/2/hi/europe/2786725.stm>; *Who are the Abu Sayyaf?*, BBC NEWS, Dec. 30, 2000, at <http://news.bbc.co.uk/2/hi/asia-pacific/719623.stm> (discussing the Abu Sayyaf); *Jaish-e-Mohammed: A Profile*, BBC NEWS, Feb. 6, 2002, at [http://news.bbc.co.uk/1/hi/world/south\\_asia/1804228.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1804228.stm) (discussing Jaish-e-Mohammad); CHRIS WILSON, PARLIAMENT OF AUSTRALIA, INDONESIA AND TRANSNATIONAL TERRORISM, Oct. 11, 2001, at <http://www.aph.gov.au/library/pubs/CIB/2001-02/02cib06.htm> (discussing Dar ul-Islam, the Islamic Defender's Front, and Laskar Jihad); *Abu Bakar Warns PM against Iraq War*, SYDNEY MORNING HERALD, Oct. 17, 2002, at <http://www.smh.com.au/articles/2002/10/17/1034561219549.html> (discussing Jema'ah Islami'ah).

14. The great majority of Muslims are Sunni. Shi'ite Muslims represent about fifteen percent of the Islamic world. Although a worldwide minority, the Shi'ites constitute a majority of the Muslims living in Iran, Iraq, and Lebanon. The Shi'ites are also a significant minority in the Persian Gulf, Pakistan, and Afghanistan. Although there are significant theological distinctions between religious doctrines held by the Sunnis and the Shi'ites, the primary distinction between the two sects involves their respective views on the juridical organization of the Islamic State. The Sunnis believe that the head of an Islamic State should be the best qualified pious individual, chosen by consensus of the *ulama* [religious scholars and other learned persons] (see *infra* note 15 for a precise definition), or, in modern times, by some other democratic or consultative process. The head of the Sunni Islamic State need not be a cleric or someone with religious training. By contrast, the Shi'ites believe that the head of the Islamic State should be a well-trained and pious cleric from the *Ahl al-Bayt* [people of the house], that is, from the family of the Prophet Muhammad. The leader of the Muslim community is described by the Shi'ites as the *Imam* and his office is known as the *Imamate*. Consistent

Iran between the mid-1960s and the late-1970s. There is a direct historical relationship between this Shi'a reinterpretation of the concept of martyrdom and the self-annihilatory violence encouraged by military *ihadists* today. This new conception of martyrdom challenges traditionally strong and universal Islamic prohibitions against suicide and represents a profound shift in the practice of Islamic theology and law, particularly the theology and law of the military *ihad*. Understanding the history of the Islamic theology of martyrdom, particularly the Shi'a theology, is therefore key to understanding contemporary *ihadist* behavior in war. This Article seeks to enhance such understandings.

The Article is divided into seven parts. Part I defines key terminology and introduces the reader to the issue of martyrdom, contrasting Islamic with Christian and Jewish views. Part II reviews the essentials of the Islamic law of war. Part III identifies the Sunni and Shi'a theological and jurisprudential sources on martyrdom and argues that, while there are great similarities between the Sunni and Shi'a approaches to the regulation of behavior in war, the Shi'a approach to martyrdom is significantly different from that of the Sunnis. This difference flows out of the status accorded to the martyrdom of Husayn, the Prophet Muhammad's grandson, in Shi'a history and theology. Part III spends some time describing Husayn's example, with its emphasis on extreme self-sacrifice and militancy as a weapon against tyranny and injustice, and shows that his example has always been among the most important paradigms in Shi'a theology, although the "Twelvers," the majority Shi'a sect, did not emphasize its militant aspects for over a thousand years.

Part IV will show that, beginning with the advent of European colonialism in the eighteenth century, the paradigm of Husayn's martyrdom began to take an increased importance as a normative reference point for anti-colonial activities among the Shi'a. Although the paradigm of the normative example of

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with this view, the Shi'ites take a much more hierarchical view of decision making in theological and jurisprudential matters. Much of Shi'ite theology and jurisprudence, including the theology and law of military *ihad*, flows from the idea that the Imam is the preeminent figure in the religious community. See generally MOOJAN MOMEN, AN INTRODUCTION TO SHI'A ISLAM: THE HISTORY AND DOCTRINE OF TWELVER SHI'ISM (1985) (providing thorough discussion of political, historical, and jurisprudential aspects of Twelver [*Imami*] Shi'ism as well as other branches of the Shi'a faith).

Husayn ebbed and flowed as a political rallying point for over two hundred years, it ultimately reached a zenith when an important group of Shi'a *ulama*<sup>15</sup> came together in the Iraqi city of Najaf in the 1960s. This group began to robustly revive and reinterpret the paradigm in a way that eventually led to self-annihilatory violent behavior by Shi'a military *jihadists*, fundamentally altering the Shi'a conception of the religious law of martyrdom.

Part IV will also show that this new Shi'a discourse on *jihad* and martyrdom emerging from Najaf — led by Imam Ruhollah Khomeini and a brilliant Iraqi jurist named Muhammad Baqir al-Sadr, and later by Sayyid Muhammad Husayn Fadlallah, spiritual mentor of Hizbu'llah<sup>16</sup> in Lebanon — rapidly proliferated throughout the Muslim world. It became an important factor in the achievement of several practical successes, particularly the Iranian Islamic Revolution and, some time later, the ejection of Israeli, French, and American forces from Lebanon. I will argue that while Sunni Islamists also worked a similar reinterpetive revival of the Sunni sources on the military *jihad* during this same time in Egypt and elsewhere, they never advocated self-annihilation and they did not achieve the kinds of spectacular successes accomplished by the Shi'a *jihadists*. The Shi'a reinterpretation of the theology and law on *jihad* and martyrdom, first articulated by Khomeini and the *ulama* in Najaf, and later elaborated by Fadlallah in Lebanon, went much further than the Sunni reinterpretation and has profoundly influenced the behavior of all subsequent military *jihadists* throughout the Islamic world.

Part V of the Article will demonstrate that this revived Shi'a approach to martyrdom now dominates all Muslim conceptions

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15. *Ulama* is the plural of *'alim*, meaning "learned person" or "one with knowledge." In common usage it refers to those "who are recognized as scholars or authorities of the religious sciences, namely the Imams of important mosques, Judges, teachers in the religious faculties of universities, and, in general, the body of learned persons competent to decide upon religious matters." Cyril Glasse, *Ulama*, in THE CONCISE ENCYCLOPEDIA OF ISLAM 407 (1989).

16. Hizbu'llah [Party of God] is a Shi'ite religious and political party and military organization that emerged out of Lebanese sectarian strife and the military occupation of Lebanon by the Israelis in the late 1970s and early 1980s. Its pan-Islamic platform seeks to universalize the struggles of the Palestinian people and the Lebanese Shi'a, linking both groups to the "oppressed of the world" and seeking to align their political struggles with other anti-colonial liberation struggles. Concomitantly, Hizbu'llah's political positions are stridently anti-Israeli, anti-Zionist, and generally critical of the Western political and military initiatives in the Arab world. See generally AMAL SAAD-GHORAYEB, HIZBU'LLAH: POLITICS AND RELIGION (2002).

of the military *jihad*, whether Sunni or Shi'a. I will argue that this transformation of religious doctrine, championed by the Shi'a *ulama* and emulated first by Hizbu'llah, then by the Palestinians and later by Al Qaeda, resulted in the appearance of a new norm of *jihadist* battlefield behavior — self-annihilation — a norm that is now accepted as a valid discharge of religious obligation under the law of the military *jihad* by a great many Muslim jurists, Sunni and Shi'a.<sup>17</sup> This conclusion effectively debunks the conventional wisdom, popular in many quarters, that self-annihilatory violence by the Palestinians and by operatives of Al Qaeda flows from either a nihilistic sense of despair growing out of the Israeli occupation of the West Bank and Gaza or from adherence to Wahhabism.<sup>18</sup> I will argue that Wahhabism actually has very little to do with the current *jihadist* use of self-annihilatory violence, and that Arab and Muslim despair, while an important factor, cannot provide a satisfactory explanation for such violence. Rather, it is the Shi'a theology that provides the linchpin for such behavior.

Part VI offers some tentative observations on the normative implications of the development of this new *jihadist* view of martyrdom for Islamic law generally. The Article concludes in Part VII that the development of this new norm is a profoundly significant development with major implications for Islamic juris-

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17. See, e.g., Sheikh Yusuf Qaradawi, Fatwa, *Whether Suicide Bombings are a Form of Martyrdom*, Nov. 8, 2003 available at <http://qaradawi.net> (in Arabic).

18. Wahhabism is a Western term for a puritanical religious movement founded in Arabia by Muhammad ibn 'Abd al-Wahhab (1703-87). The movement has grown since that time and is best described as a sub-sect within Sunni Islam. The Wahhabis, who prefer to describe themselves as *Muwahhidun* [Unitarians], eschew all innovation in the practice of the Islamic religion and in its jurisprudence. They emphasize the doctrine of the oneness of God [*tauhid*] and preeminence of the Qur'an and Sunnah in human affairs. The Wahhabis severely restrict legal decision-making on the basis of scholarly consensus [*ijma*]. Although Wahhabi thinkers will sometimes encourage original thinking in matters of religion, they are very cautious and greatly constrained by the Qur'anic text and the Prophetic traditions when they are required to use analogical reasoning in applying text-based rules to new problems not contemplated by the texts or governed by a clear, usually ancient, scholarly consensus. This has led to an extreme conservatism in Wahhabi religious affairs. Wahhabism has had a strong impact on the development of law and jurisprudence in Saudi Arabia and the Persian Gulf. In terms of the Sunni Schools of Law, it is most closely aligned with the Hanbali School, founded by Ahmed ibn Hanbal in the 9th century in Iraq. See generally FAZLUR RAHMAN, *ISLAM* 196-200 (2d ed., Univ. of Chicago Press 1979) (1966) (discussing general history of Wahhabism, including its relation to ibn Hanbal).

prudence generally and for the nature of juridical relations between Sunni and Shi'ite Islam.

## I. TERMINOLOGY AND BACKGROUND

### A. *The Four Key Terms*

Before proceeding further, it will be useful to clarify the meanings of several key legal terms used in the discussion. Contemporary rhetoric has a tendency to blur and sometimes engulf the definitions assigned to certain concepts by classical Islamic law. The classical definitions are therefore crucial. Although Islamic classical legal definitions can also be controversial and may sometimes lead to an overly formalist analysis, the traditional meanings are important because they tend to establish the definitional boundaries in the current discourse on contested issues, both among Muslims and between Muslims and non-Muslims.

There are four key terms that, for purposes of this Article, require precise definitions. They are: (1) military *jihād*; (2) martyrdom or *shahada*<sup>19</sup>; (3) suicide or *intihar* [referred to in the classical literature as *qatl al nafs* or “self-murder”]<sup>19</sup>; and (4) self-annihilatory violence. Each will be defined in turn.

First, as previously indicated, the term military *jihād* describes the legally mandated collective or individual effort and struggle on the part of Muslims, using military methods, including violence and war, to defend the Islamic religion or Muslim communities that are perceived to be threatened by non-Muslim adversaries.

Secondly, the term martyrdom [*shahada*] refers to the Islamic theological doctrine that posits that believers who give their lives on the battlefield in a military *jihād*, “for the cause of God” and in furtherance of a military objective of the *jihād*, do not die but, rather, immediately enter paradise,<sup>20</sup> where they are copiously rewarded for their religious sacrifice. In classical Islamic law, legal and normative implications flow directly from

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19. See Lynda Clarke, *Suicide*, in 4 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 133 (John L. Esposito ed., 1995).

20. Islam, like Christianity, envisions paradise as a place of everlasting bliss, where one will forever benefit from the favors of God. These favors will include all of the pleasures that humans now enjoy on earth as well as an endless stream of other unimaginable pleasures. See 4 SAHIH MUSLIM 1476-77 (Abdul Hamid Siddiqi trans., 1971).

such acts of martyrdom. The martyr [*shahid*] is given a special funeral and members of the martyr's family are entitled to receive charity and other compensatory benefits from the community and the Islamic State. The participant in a military *jihad* often makes arrangements for such benefits in advance, in anticipation of the possibility of martyrdom. The martyr's behavior is held up to the community as a positive example, to be emulated and praised by all Muslims.<sup>21</sup>

Thirdly, the term suicide [*qatl al nafs* or *intihar*], under the classical Islamic definition, is an act of self-murder by the believer, acting with the clear and unequivocal intention to take his or her life. Suicide is a very serious misdeed in Islamic theology and law.<sup>22</sup> Theologically, the believer who commits suicide commits a grave sin and is consigned to hell.<sup>23</sup> Although there is some dispute about it, many jurists hold that the suicide victim is not entitled to the funeral rites ordinarily bestowed upon other deceased Muslims. Although the family of the suicide victim is not condemned or punished, there is never any emulation or praise for the suicidal act. Hence, suicide must be carefully distinguished from martyrdom.

Lastly, this Article will use the term "self-annihilatory violence" to describe certain behaviors of contemporary military *jihadists*. This terminology does not appear in the classical jurist literature on martyrdom. The term "self-annihilatory violence," as used in this Article, is my own terminology and is meant to

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21. For a succinct review of the concept of martyrdom in Islam, touching briefly upon some of the issues raised in this Article, see B. Todd Lawson, *Martyrdom*, in 3 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 54 (John L. Esposito ed., 1995).

22. The prohibition is found in a *hadith qudsi*, that is, a statement of the Prophet ascribed to God himself. In the *hadith*, the Prophet observes a wounded man take his own life. God then says, "My servant anticipated my action by taking his soul (life) in his own hand; therefore, he will not be admitted to paradise." Franz Rosenthal, *On Suicide in Islam*, 66 J. AM. ORIENTAL SOCIETY 239, 243-44 (1946) (citing SAHIH BUKHARI, 1.343 & 2.373). Other *hadith* also clearly support the prohibition. Abu Huraira reported that the Prophet condemned suicide in the strongest possible terms, predicting that wrongdoer would be required to endlessly repeat the suicidal act in hell and that he would reside in hell forever. SAHIH BUKHARI 7.670, at <http://muttaqun.com/suicide.html> (July 14, 2003). The Prophet is also reported to have said: "None amongst you should make a request for death, and do not call for it before it comes, for when any of you dies, he ceases [to do good] deeds and the life of the believer is not prolonged but for goodness." 4 SAHIH MUSLIM, *supra* note 20, at 1411. R

23. The Islamic conception of hell is also similar to the Christian conception, with its denizens enduring an eternal and endlessly painful torment by fire and other indignities. See THE CONCISE ENCYCLOPEDIA OF ISLAM, *Hell*, in Glasse, *supra* note 15, at 152. R

describe violent behavior by a *jihadist* actor who intends to take his own life in the furtherance of a *jihadist* objective and equips himself, in advance, with the technological means to accomplish the dual result of inflicting severe injury, including loss of life, on his adversary and destroying himself in the process.

B. *Islamic Martyrdom compared to Jewish and Christian Concepts of Martyrdom*

As this Article will show, the current methodologies of *jihadist* self-annihilation are controversial, even for Muslims, because they challenge the core conceptions of martyrdom and suicide as they have developed in Islamic theology and law over the centuries. The challenge occurs in part because, even though the idea of martyrdom occupies a central place in Islamic history and theology, jurists and scholars have not spent much time thinking or writing about the concept. There are very few foundational or medieval Islamic theological and legal treatises that separately treat the concept of martyrdom.<sup>24</sup> Similarly, there is very little Western scholarship on martyrdom in Islam, its role in the development of religious doctrine, and, specifically, its place in the Islamic law of war.<sup>25</sup>

This is in sharp contrast to the extensive attention devoted

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24. The best compilation in English of the medieval scholarship appears to be ETAN KOHLBERG, *MEDIEVAL MUSLIM VIEWS ON MARTYRDOM* 281-307 (1997). He does not cite any medieval work that is exclusively concerned with martyrdom. Almost all of the sources discussing martyrdom are more generally concerned with military *jihad* or with burial practices, charity, or other tangential topics.

25. There is some recent scholarship. See, e.g., Etan Kohlberg, *Martyrs and Martyrdom in Classical Islam*, in *RELIGIONS AND CULTURES: FIRST INTERNATIONAL CONFERENCE OF MEDITERRANEUM* 91-120 (Adriana Destro & Mauro Pesce eds., 2002); Keith Lewinsein, *The Reevaluation of Martyrdom in Early Islam*, in *SACRIFICING THE SELF: PERSPECTIVES ON MARTYRDOM AND RELIGION* 78-91 (Margaret Cormack ed., 2001) [hereinafter *SACRIFICING THE SELF*]; Daniel Brown, *Martyrdom in Sunni Revivalist Thought*, in *SACRIFICING THE SELF*, *supra* at 107-17; JAMES A. BILL & JOHN ALDEN WILLIAMS, *ROMAN CATHOLICS AND SHI' I MUSLIMS* (2002); Mahmoud Ayoub, *Martyrdom in Christianity and Islam*, in *RELIGIOUS RESURGENCE: CONTEMPORARY CASES IN ISLAM, CHRISTIANITY, AND JUDAISM* 67-77 (R. Antoun & M. Hegland eds., 1987); KOHLBERG, *supra* note 24 (citing and describing A.J. Wensinck's study, *The Oriental Doctrine of the Martyrs*, published in Amsterdam in 1921 by the Royal Netherlands Academy of Arts and Sciences, as "[o]ne of the few monographs on Muslim martyrdom"). This is true for both the orientalist scholarship as well as the Islamic scholarship. The first book-length treatment of the "suicide bombing" phenomenon in a European language (German), has recently appeared. See CHRISTOPH REUTER, *MEIN LEBEN IST EINE WAFFE [MY LIFE IS A WEAPON]* (2002).

to martyrdom in the Christian<sup>26</sup> and Jewish<sup>27</sup> sources, especially the medieval sources, and the scholarship spawned by them.<sup>28</sup> Perhaps the best-known example of martyrdom in Jewish history is the account of the incident at Masada. In the first century of the Common Era [CE], the area now called Israel was held as a Roman colony. Many of the Jewish people who lived in this region refused to submit to the religious practices of Rome. The last area that the Jewish people controlled was an old fortress known as Masada. These people, known as the Zealots, led raids on nearby Roman cities and remained the sole Jewish stronghold inside Israel. A Roman general decided to attack Masada in hope of seizing it. The Zealots prepared themselves for a long siege by rationing food and water. The strong Roman army eventually penetrated the outer wall. Rather than give the glory of triumph to the Roman soldiers, the Zealots committed

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26. In the Christian view, martyrdom is "suffering death for one's religious beliefs." Daniel Callam, *Martyrdom, Christian*, in *DICTIONARY OF THE MIDDLE AGES* 159 (Joseph R. Strayer ed., 1987). The medieval church developed cults focused on the remains of martyrs and relics of their lives. Annual celebrations of the martyrs' feasts and pilgrimages to their shrines helped keep alive a respect and even a desire for martyrdom. *Id.* This ideal was first put forth in the *MARTYRDOM OF POLYCARP* (written in the second century) and has since become the norm. JAN WILLEM VAN HENTEN & FRIEDRICH AVEMARIE, *MARTYRDOM AND NOBLE DEATH* 2 (2002). The tradition of the Christian martyr also continued in Protestant hagiographies, although it was the Catholic Church that persecuted these martyrs for espousing Protestant beliefs. *See generally* FOX'S *BOOK OF MARTYRS* (William Byron Forbush ed., 1926) (describing numerous incidents such as the Inquisition, the Bartholemew Massacre at Paris, and persecution in Ireland).

27. "The commandment of martyrdom (*kiddush ha-shem*) is incumbent upon a Jew under any one of three circumstances, which are sometimes termed 'persecution,' 'public action,' and 'the three inviolables.'" Haym Soloveitchik, *Martyrdom, Jewish*, in *DICTIONARY OF THE MIDDLE AGES*, *supra* note 26, at 160-61. The "three inviolables" are: (1) worshipping idols; (2) committing murder; or (3) engaging in incestuous or adulterous intercourse. A Jew commanded to commit any of the "three inviolables" must refuse to obey the order or suffer any indignity, including death, if the oppressor insists on compliance. "Public action" martyrdom occurs where the Jew receives a public demand to violate other religious restrictions (such as eating non-kosher food). There are rules defining when a demand is "public." These rules revolve around the ascertainable presence of ten Jewish men. They suggest that coerced violation of religious restrictions may be excusable in private circumstances. Lastly, martyrdom is incumbent on any Jew who is ordered to commit even minor religious infractions during a period of religious persecution. In each of the three circumstances, the Jew must choose death over the coerced sacrilegious behavior. *Id.*

28. *See, e.g.*, ARTHUR DROGE & JAMES TABOR, *A NOBLE DEATH: SUICIDE AND MARTYRDOM AMONG CHRISTIANS AND JEWS IN ANTIQUITY* (1992); AHARON AGUS, *THE BINDING OF ISAAC AND MESSIAH: LAW, MARTYRDOM, AND DELIVERANCE IN EARLY RABBINIC RELIGIOSITY* (1988); Carole Straw, "A Very Special Death": *Christian Martyrdom in Its Classical Context*, in *SACRIFICING THE SELF*, *supra* note 25, at 39.

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mass suicide, seeing suicide as the best way to avoid slavery and death at the hands of the Romans.<sup>29</sup>

Maimonides, Aquinas, and Augustine all discussed the problems of defining and classifying martyrdom, the behavior motivated by the desire for martyrdom, and the difficulties in distinguishing martyrdom from suicide. Maimonides argued that choosing martyrdom where the circumstances do not demand it is essentially suicide.<sup>30</sup> In spite of this prohibition,

[n]orthern European communities throughout the Middle Ages frequently chose such martyrdom, and in the course of the centuries a strong case was made for its permissibility, possibly even its commendability. It is this view that generally prevailed. Committing suicide so as to avoid being tortured into changing one's religious allegiance would appear to be forbidden. But again northern European Jewry did so frequently, and post-facto justifications were found.<sup>31</sup>

St. Thomas Aquinas pondered the merit of martyrdom as an aspect of his analysis of the virtue of courage and its opposed vices.<sup>32</sup> Aquinas first asked whether martyrdom itself can be an act of virtue. In answering this question, Aquinas considered the relation between suicide and martyrdom. Relying upon St. Augustine's citation to the example of certain holy women who, in a time of persecution, threw themselves into a river to avoid attacks on their chastity, Aquinas posited that, since suicide is unlawful, and many acts of martyrdom are accomplished through the vehicle of suicide, martyrdom arguably cannot be a virtuous act because no unlawful deed can be an act of virtue.<sup>33</sup> Aquinas ultimately rejected this argument, relying on citations to Augustine and the testimony of the scripture that sacrifice of life for God is a praiseworthy act.<sup>34</sup>

Aquinas' overall analysis of the virtue of courage, described by him as one of the four "cardinal virtues," was revolutionary in

29. See *Masada*, in 2 ENCYCLOPEDIA JUDAICA 1078-92 (Cecil Roth ed., 1971).

30. See Soloveitchik, *supra* note 27, at 161; MAIMONIDES, MISHNEH TORAH: HILCHOT YESODAI HA TORAH 207-09, 212 (Rabbi Eliyahu Touger trans., 1989) (including commentary to Halacha 1 by Rabbi Touger).

31. Soloveitchik, *supra* note 27, at 160-61.

32. ST. THOMAS AQUINAS, 42 *Summa Theologiae* 41-59 (P.G. Walsh & Anthony Ross eds., Blackfriars 1966).

33. *Id.* at 41.

34. *Id.* at 43 (citing *Matthew* 5:10 which provides: "[b]lessed are they who suffer persecution for justice's sake, for theirs is the kingdom of heaven").

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that he assigned central importance to the Aristotelian view, which placed great premium on the merit of reason in all virtuous acts, including acts of courage.<sup>35</sup> Aquinas condemned fearless acts motivated by pride, insufficient love, lack of reason (“foolishness”), fanaticism, dim-wittedness, or bravado.<sup>36</sup> This followed the Aristotelian framework that labeled “utter fearlessness” as “madness” and daring as “the mark of the imposter.”<sup>37</sup>

Aristotle did not, however, directly address the question of martyrdom in his treatise and Aquinas’ treatment of the issue was therefore the product of his original thinking.<sup>38</sup> Relying on *Matthew*, *Luke*, Cicero, St. Augustine, St. Cyprian, and St. Paul, Aquinas concluded that martyrdom is the highest form of courage and that the scriptural imperative, demanding the ultimate sacrifice in some cases, is sufficient justification for the martyrdom of the believer.<sup>39</sup> This argument would seem to imply that self-annihilation for the sake of one’s belief would not be suicide but simply meeting death for another greater purpose. Such action would, therefore, in some cases, be an acceptable form of martyrdom in the eyes of the Church.<sup>40</sup>

These Christian and Jewish sources show that there is an abundant mine of robust materials on martyrdom in Judeo-Christian religious traditions, even though Christian and Jewish concepts of just war or holy war are now somewhat obsolete and anachronistic. The preeminence of secular governments in the West has, to a large extent, marginalized the role of religious law governing war in those communities.

Muslims, on the other hand, still regard the law of the military *jihad* as an integral part of their religious law and of some significance when Islamic communities are perceived as being under threat. Martyrdom, therefore, remains an important idea in the contemporary Islamic world-view. The concept of martyrdom in Islam is not understandable without some comprehen-

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35. *Id.* at xxii-xxiii (Preface by Anthony Ross). *See also id.* at 241-43 (App. 1 by P.G. Walsh).

36. *Id.* at 75-79.

37. *Id.* at 241 (Walsh app., citing ARISTOTLE, *NICOMACHEAN ETHICS*, III, 6-9).

38. *Id.* at 242.

39. *Id.* at 47-51.

40. It is important to note that the Aristotelian-Thomistic view of martyrdom would not condone the intentional killing of innocents in the act of self-annihilation. As this Article will show, the classical Islamic jurisprudence also prohibits the intentional killing of innocents.

sion of the general principles governing the military *jihad*. Therefore, before beginning the discussion of martyrdom, it will be useful to briefly review the essential features of the Islamic law of war.

## II. THE ISLAMIC LAW OF WAR — SOURCES AND OVERVIEW

The sources for the Islamic law of war, that is, the law governing the military *jihad*, are well defined. These sources coalesced much earlier than religious sources for the law of war in the Western legal tradition, even though the Islamic religion is much younger than Christianity and Judaism.<sup>41</sup> Like other aspects of Islamic law, the sources for the Islamic law of war are the injunctions, prohibitions, and guidance announced in the Qur'an and in the Sunnah laid down by the Prophet Muhammad in his conduct of war and statecraft during his lifetime. These two sources are primary and universally applied in all cases by all Muslim jurists, Sunni and Shi'a, when discussing issues surrounding the legal norms governing the conduct of a military *jihad*.<sup>42</sup>

The Qur'an authorizes defensive war when Muslims are expelled from their homes "in defiance of right" and because they

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41. See Ann Elizabeth Mayer, *War and Peace in the Islamic Tradition and International Law*, in JUST WAR AND JIHAD: HISTORICAL AND THEORETICAL PERSPECTIVES ON WAR AND PEACE IN WESTERN AND ISLAMIC TRADITIONS 195 (John Kelsay & James Turner Johnson eds., 1991) [hereinafter JUST WAR AND JIHAD].

42. See generally MUHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 14-85 (Islamic Texts Society 1991) (1989) (discussing the basic sources for decision-making in Islamic jurisprudence). Additional source material, for Sunni jurisprudence, can be found in the practice of the four "Rightly-Guided Caliphs" during the first thirty years after the death of the Prophet Muhammad, in pronouncements of the companions of the Prophet who survived him, and in textbooks and treatises authored and circulated by Sunni jurists and theologians during the formative period in Islam. The early Shi'ite jurists also produced a multitude of texts and treatises covering the topic of *jihad*. The Shi'ites relied on many of the same sources, except that they disregarded the practice of three of the four "Rightly-Guided Caliphs," relying only on the opinions and rulings of Ali, the fourth Caliph, and the Shi'ite imams who succeeded him.

A distinctive element of Shi'ite jurisprudence and political philosophy is the concept of the *Imamate*, which is in sharp contrast with Sunni concepts of governance. In Shi'ite jurisprudence, the opinion of the *Imam* is an authoritative and binding source of law. The classical Shi'a jurists therefore insisted that the *Imam* is the only one who can declare a *jihad*. Even though the early Shi'ite jurisprudence on *jihad* did not differ substantially from the Sunni jurisprudence, the Shi'ite requirement that a *jihad* can only be declared on the authority of the *Imam* has had a significant impact on the application of the law of *jihad* among the Shi'a, even in recent times.

utter the Islamic monotheistic creed.<sup>43</sup> This verse was the first of several general pronouncements on fighting and war to be revealed to the Prophet Muhammad after his emigration to Medina. It gave permission to him and his followers to fight a defensive war against the Meccans who pursued them because, in spite of the Prophet's efforts to establish a peaceful new State in Medina, his enemies persistently sought to destroy it. Additional Qur'anic verses were revealed as this military situation unfolded. The main verses revealed during this period in the Prophet's life provided that Muslims must fight those who fight them but that the military response should be only that necessary to repel the invader.<sup>44</sup>

The predominant view that the military *jihad* is defensive represents one classical view of warfare in Islam. There are Qur'anic provisions that support a more expansive interpretation. Jurists interpreting the classical texts often describe the Qur'anic and Prophetic evolution of the law of military *jihad* as occurring in four historical stages.<sup>45</sup> The first stage involved peaceful propagation of the faith and emigration to Medina by the Prophet and his followers to avoid persecution in Mecca.<sup>46</sup> After the Meccan enemy continued to persecute the Muslims, a second defensive stage emerged, involving military actions by the Muslims to defend their newly established state in Medina. The third stage involved a limited aggressive war constrained by the ancient prohibitions on fighting in the Sacred Months of the year, pursuant to the pre-Islamic tribal practice.<sup>47</sup> The fourth stage occurred after the rapid victory of the Islamic forces on the Arabian Peninsula and the emergence of an expansionist polity,

43. See *supra* note 9 and accompanying text (discussing Qur'an, verse 22:39).

44. See THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 76 (translating Qur'an, verse 2:190, as "[F]ight in the cause of Allah those who fight you. But do not transgress limits; for Allah loveth not transgressors").

45. See, e.g., REUVEN FIRESTONE, JIHAD: THE ORIGIN OF HOLY WAR IN ISLAM 50-65 (1999) (cataloging the classical juristic sources and arguing that the traditional four-part analysis is unsatisfactory because of the contradictory nature of the Qur'an verses and the uncertainty of various theories of abrogation).

46. This view of the first stage is confirmed in early exegetical works such as *Tafsir Muqatil ibn Sulayman*, *Tanwir al miqbas*, attributed to 'Abdullah ibn Abbas, and Tabari. FIRESTONE, *supra* note 45, at 51 nn.24-26 (citing sources).

47. FIRESTONE, *supra* note 45, at 56-60. The prohibitions on aggressive warfare in the four "Sacred Months" are found in the Qur'an, verses 2:217; 9:2; 9:5 and the last sentence of 2:191. THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 86, 437-38, and 77, respectively.

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seeking to advance the Islamic cause throughout the rest of the then-known world. The Qur’anic expression of the military aspects of this last stage is best represented by verse 9:5 which exhorts Muslims to:

fight and slay the Pagans wherever ye find them . . . seize them, beleaguer them, and lie in wait for them in every strata-gem [of war]; But if they repent, and establish regular prayers and practise regular charity, then open the way for them: For Allah is Oft-Forgiving, Most Merciful.<sup>48</sup>

Acceptance of this evolutionary view of the military *jihad* would lead to the conclusion that the world is still in the fourth stage today and therefore an imperialist, aggressive *jihad*, involving subjugation and forced conversion of non-Muslims, is appropriate and permitted by Islamic law. A number of modernist jurists have not accepted this aggressive view of *jihad*, and instead argue that war should always be the last resort in relations with non-Muslims.<sup>49</sup> The main purpose of war by this view is simply to end persecution and oppression of Muslims and to bring about God’s justice in the world. There are Qur’anic provisions that lend support to this position.<sup>50</sup> This view would lead one to

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48. THE MEANING OF THE HOLY QUR’AN, *supra* note 9, at 438 (translating Qur’an, verse 9:5). Jurists have argued that this verse abrogates at least 124 other verses that permit a less aggressive attitude toward nonbelievers. FIRESTONE, *supra* note 45, at 63 (citing IBN JAWZI, NAWASIKH AL QUR’AN 173); *see also* E. Tyan, *Djihad*, in EI2, *supra* note 6, at 538 (confirming the view that the concept of *jihad* is subject to a classification scheme that contemplates four “successive categories” that correspond to the historical stages we have described, and asserting that the last category requires the conclusion that *jihad* is obligatory even if the unbelievers do not start the war). This view is disputed. *See, e.g.*, LOUAY M. SAFI, PEACE AND THE LIMITS OF WAR: TRANSCENDING CLASSICAL CONCEPTION OF JIHAD 8-15 (2001) (citing the medieval jurist al Qurtubi, as well as Umar ibn Abd al Aziz, Ibn Abbas, and Tabari, and arguing that the *jihad* was only obligatory with respect to the problem of the obstinacy of the pagan Arabs since, otherwise, verse 9:5 contradicts other verses of the Qur’an requiring a regime of peace with ‘the people of the book’).

49. RUDOLPH PETERS, ISLAM AND COLONIALISM: THE DOCTRINE OF JIHAD IN MODERN HISTORY 113-15, 121-35 (1979) (citing ‘ALI ‘ALI MANSUR, AL-SHARI‘AH AL-ISLAMIYAH WAL-QANUN AL-DAWLI AL-‘AMM; Subhi al-Mahmassani, *Principles of International Law in the Light of the Islamic Doctrine*, 1 RECUEIL DES COURS ACADEMIE DE DROIT INT’L. 117, 321 (1966); KHADDURI, *supra* note 6, at 121 n.44).

50. THE MEANING OF THE HOLY QUR’AN, *supra* note 9, at 77-78, (translating Qur’an, verse 2:193, as “[a]nd fight them on until there is no more tumult or oppression, and there prevail justice and faith in Allah; but if they cease let there be no hostility except to those who practise oppression”); *id.* at 213-14 (translating Qur’an, verse 4:90, as “if they withdraw from you but fight you not, and [instead] send you [guarantees of] peace, then Allah hath opened no way for you [to war against them]”) (bracketed words

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the conclusion that peace is the starting position in all Islamic political action and war is only allowed for the purpose of repelling aggression or lifting oppression.<sup>51</sup>

Consistent with this view, there are some Qur'anic verses that do not fit into the four-stage historical sequence described earlier. For example, 60:8 provides: "Allah forbids you not, with regard to those who fight you not for [your] faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just."<sup>52</sup>

This verse also supports the argument that a constant state of war with non-believers is beyond the intent of the Qur'an. Numerous other verses similarly urging achievement of peaceful relations with non-Muslims would not make sense if God wished a permanent state of warfare with non-Muslims.<sup>53</sup> The overarching concern of all of these verses is for the unfettered establishment of the Islamic religion wherever Muslims seek to practice it and the achievement of a regime of justice on Earth. When there is war, it sometimes will require the sacrifice of life for, in the words of the Qur'an, "tumult and oppression are worse than slaughter."<sup>54</sup> Yet the preference seems clearly to be for peaceful relations with non-Muslims.<sup>55</sup> Much of the authentic *hadith* on military *jihad*, collected and systematized during the formative period in Islamic law, are generally of the same import.<sup>56</sup>

The range of Qur'anic and Sunnaic pronouncements on *jihad* justifies the conclusion that these sources are not free from ambiguity and wide-ranging interpretation. Although the revelation of these sources is fixed in the legal history and readily as-

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describe the meaning implied from context and linguistic usage); *id.* at 429 (translating Qur'an, verse 8:61, as "but if the enemy incline towards peace, do thou [also] incline towards peace, and trust in Allah").

51. SAFI, *supra* note 48, at 23-40.

52. THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 1454-55.

53. This argument is persuasively advanced in a recently published collection of essays by Professor Khaled Abou El Fadl and others. See KHALED ABOU EL FADL, THE PLACE OF TOLERANCE IN ISLAM 18-21 (Joshua Cohen & Ian Lague eds., 2002) (citing verses 2:190; 2:194; 5:2; 60:9; 8:61; 4:90; and 4:94); see also RUDOLPH PETERS, JIHAD IN CLASSICAL AND MODERN ISLAM: A READER 103, 112 (1996).

54. THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 77 (translating Qur'an, verse 2:191).

55. See generally Peters, *supra* note 53, at 103-48 (surveying the various views of modernists who argue for a preference for peaceful relations in the doctrine of *jihad*).

56. ABDUR RAHMAN I. DOI, THE SHARI'AH: THE ISLAMIC LAW 437-48 (Ta Ha Publishers 1997) (1984) (citing Qur'an and canonical *hadith*).

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certainable, the discourse among Muslims on the appropriateness of military *jihad* evolved considerably after the formative period in Islam. Beginning with the demise of the Ottoman Empire and continuing through recent anti-colonial and post-colonial struggles, a wide-ranging variety of views have emerged among Muslim legal scholars on the appropriateness of military *jihad* and the circumstances that might justify its invocation. Muslim views on war and peace are now just as extensive as those of Christianity.<sup>57</sup>

I will not attempt to resolve here the competing views on the appropriateness of the military *jihad*. The purpose of reviewing the law of war is to introduce the reader to the diversity of views and to emphasize that they all contain a concept of martyrdom, a central feature in any discussion of *jus in bello*<sup>58</sup> issues in the Islamic law of war.<sup>59</sup>

### III. MARTYRDOM IN ISLAM

The Arabic noun for martyr is *shahid* [plural *shuhada*].<sup>60</sup> The word is derived from the Arabic trilateral root verb, *shahida* [meaning “he witnessed,” “he experienced an event personally,” or “he was physically present”].<sup>61</sup> The noun *shahid* is often used in the Qur’an in its primary sense, that is, describing “one who witnesses an event.”<sup>62</sup> *Al Shahid* is also one of the divine names

57. Gary Legenhausen & Mehdi Abedi, *Introduction, in* JIHAD AND SHAHADAT: STRUGGLE AND MARTYRDOM IN ISLAM 9 (Gary Legenhausen & Mehdi Abedi eds., 1986) [hereinafter JIHAD AND SHAHADAT].

58. See James Turner Johnson, JUST WAR AND JIHAD, *supra* note 41, at 5 (stating *jus in bello* is the aspect of the “just war” tradition that sets the limits for the use of justified force).

59. A few scholars have recently concerned themselves with *jus in bello* issues in Islamic law, although the concept of martyrdom has not received much attention. See, e.g., KHALED ABOU EL FADL, REBELLION AND VIOLENCE IN ISLAMIC LAW (2001); Sherman A. Jackson, *Domestic Terrorism in the Islamic Legal Tradition*, MUSLIM WORLD, Fall 2001, at 293; Khaled Abou El Fadl, *The Rules of Killing at War: An Inquiry Into Classical Sources*, MUSLIM WORLD, April 1999, at 144-57; Sohail H. Hashmi, *Saving and Taking Life in War: Three Modern Muslim Views*, MUSLIM WORLD, April 1999, at 158-80; David Aaron Schwartz, Note, *International Terrorism and Islamic Law*, 29 COLUM. J. TRANSNAT’L L. 629 (1991).

60. For an excellent review of the concept of the *shahid* in Islamic law and theology, see Etan Kohlberg, *Shahid*, EI2, *supra* note 6, at 203-07.

61. HANS WEHR, A DICTIONARY OF MODERN WRITTEN ARABIC 571 (Spoken Languages Services 4th ed. 1994). The root verb in Arabic is expressed in the third person masculine singular.

62. *Id.* There is another similar word in Arabic, *shahid*, [plural *shuhud*] which also conveys the same meaning, but it is used almost exclusively to describe someone who

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or attributes of God who, according to the Qur'an, is "witness" to all things and the possessor of all knowledge. In addition to describing God as a "witness," there are many Qur'anic verses depicting human beings as "witnesses" to a variety of events and ideas in their lives on earth. Preeminent among these assertions is the overarching Qur'anic concept that humankind is witness to the theological fact that there is only one God in the universe. Therefore, being a "witness" to monotheism is central to the idea of being a Muslim.<sup>63</sup>

#### A. *The Qur'anic View of Martyrdom*

The Qur'anic provisions on martyrdom are rather spare. The most frequently cited verse, 9:52, promises true believers the "two glorious things" [*husnayaeen*], and these are, by common convention of the Arabic language, construed to be "martyrdom or victory."<sup>64</sup> In another important verse, 3:169, the Qur'an declares: "Think not of those who are slain in Allah's way as dead. Nay, they live, finding their sustenance in the Presence of their Lord."<sup>65</sup> Thus, the Holy Book provides that those who die in the cause of God do not actually die but rather proceed directly to paradise.

In several other provisions, notably, at 3:140, 4:69, 3:170, and 57:19, the phrasing is not as clear. This is because the Qur'an uses the term *shuhada'* [literally "witnesses"] in these verses to describe people who will be rewarded for being truthful and steadfast in the cause of God. Such steadfastness might reasonably include the sacrifice of life. Indeed, by wide consensus, the language in these verses is interpreted to describe "martyrs" rather than "witnesses."

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gives evidence in a legal proceeding. Rudolph Peters, *Shahid*, in EI2, *supra* note 6, at 207-08. R

63. Indeed, the formula pronounced by the believer when he or she becomes a Muslim or reconfirms his or her belief in the Islamic creed, *ashhadu ana la illaha ila Allah, wa ashhadu ana Muhammadan rasul Allah* [I bear witness that there is no god but God and I bear witness that Muhammad is his Messenger], defines who is Muslim and who is not, and is called "*kalimat al shahada*" or "the oral testimony [oath-taking]." See, e.g., FREDERICK MATHEWSON DENNY, AN INTRODUCTION TO ISLAM 107 (2d ed., Macmillan 1994); THOMAS W. LIPPMAN, UNDERSTANDING ISLAM: AN INTRODUCTION TO THE MUSLIM WORLD 1 (2d ed., Meridian 1995) (1982).

64. THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 454 (translating Qur'an, verse 9:52). R

65. THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 172 (translating Qur'an, verse 3:169). R

The question arises: How is the interpretive leap from “witness” to “martyr” made in reading the Qur’anic text?<sup>66</sup> It is often suggested that the reason the Qur’an refers to martyrs as “witnesses” is that the act of martyrdom is viewed as a clear form of testimony in support of the Islamic theological creed.<sup>67</sup> It is through the testimony of the martyr that mankind is able to know the truth of the Islamic theological creed and to be able to distinguish the true believers from the non-believers. Amassing proof of belief in the creed is not an easy task, and those who are willing to strive (the literal meaning of *jihad*) and face death are among the best examples of the kind of witness it takes to establish the truth of religious belief. The act of martyrdom is therefore a form of testimony of the martyr’s faith in God, one that his fellow Muslims should emulate and celebrate.

### B. Early Islamic Juristic Classifications of Martyrs

In addition to the Qur’anic references, the terms *shahid* and its plural *shuhada’* are found in hundreds of *hadiths* and in *sira* literature [biographical accounts] recounting events from the earliest times in the Prophet Muhammad’s mission, especially battlefield events after the Prophet established the new Islamic State in Medina. These accounts are at the heart of the juristic discourse on martyrdom and they make it clear that the early Muslims understood the foundational Quranic references to the *shuhada’* as referring to those who died in battle during a military *jihad*.<sup>68</sup> All of these early martyrs were men, as women

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66. For a thorough etymological exploration of the origin and meanings of the word *shahid* in the Arabic language, see EDWARD WILLIAM LANE, AN ARABIC-ENGLISH LEXICON 1610 (Islamic Texts Society 1984) (1872).

67. Similarly, the word “martyr,” in English and Latin, is derived from the Greek *martyr*, which also means “witness” in the classical Greek language. See *Martyr*, in THE BARNHART DICTIONARY OF ETYMOLOGY 460 (Robert K. Barnhart ed., 1995). The famous orientalist scholar Ignaz Goldziher suggests that the use of the word *shahid* by the early Muslims to describe “one who witnesses for his faith by the sacrifice of his life” derived from the Christian view of martyrdom, expressed in the Syriac word *sahda* and the New Testament’s Greek equivalent. He forcefully asserts that the ascription of *shahadat* martyrdom was post-Qur’anic and the product of a subtle linguistic shift in meaning accomplished by scholars and opinion-makers in the formative period of Islam. See IGNAZ GOLDZIHAR, 2 MUSLIM STUDIES 350-54 (S.M. Stern ed., C.R. Barber & S.M. Stern trans., State University of New York Press 1971) (1888); see also Lewinstein, *supra* note 25, at 78-79.

68. In addition to the Qur’anic references, the *Sunnah* also makes it clear that a pure, unmitigated bliss awaits the martyr in paradise. Etan Kohlberg provides a summary of the Sunnaic traditions on the fate of the martyr:

under normal circumstances were not permitted to engage in battle.<sup>69</sup>

Because the designation as a martyr can have important juridical implications for the deceased's family and compatriots, much of the attention of the early jurists was concerned with defining martyrdom and identifying behaviors that would qualify one for the designation. There are two main types of martyr recognized by Muslim jurists and theologians. The first type is the martyr "both in this world and the next world." The "battlefield martyr" who dies in a military *jihad* is of this type.<sup>70</sup> The second type of martyr is "of the next world only." This classification of lesser martyrs contains a number of interesting categories, including, *inter alia*: those murdered while in the service of God; those killed for their beliefs; those who die from disease or accident; women who die in childbirth; those who love, remain chaste, conceal their love, and die with their secret intact ("martyrs of love"); and those who die a natural death while engaged in a meritorious act, such as the pilgrimage to Mecca, a worthwhile scholarly pursuit, or after leading a virtuous life.<sup>71</sup> There is

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All his sins will be forgiven; he will be protected from the torments of the grave; a crown of glory will be placed on his head; he will be married to seventy-two houris and his intercession will be accepted for up to seventy of his relations. When the martyrs behold the delights awaiting them, they will ask to be brought back to life and killed again; but this is one request which even they will be denied . . . According to some traditions, the spirits of the martyrs will ascend directly to Paradise, there to reside in the claws of green birds near God's throne. During the Resurrection these spirits will be returned to the martyr's earthly bodies and the martyrs will then be given their abode in Paradise (*dar al-shuhada*).

Kohlberg, *Shahid*, in EI2, *supra* note 6, at 204.

69. KOHLBERG, *supra* note 24, at 282, 282 n.5 (citing, *inter alia*, IX IBN KATHIR, AL-BIDAYA WA L-NIHAYA 20 (Beirut n.d.)). There certainly are accounts of bravery and martyrdom by women in battle. The Ibn Kathir reference is to an account of the battlefield exploits of the Kharijite (secessionist) leader Shabib ibn Yazid, who reportedly counted 250 women in his fighting force, including his wife and mother. Both were killed in battle. "Shabib's mother Jahiza is described in some traditions as 'one of the bravest of women' (*min ashja' al-nisa'*), while Shabib's wife Ghazala is said to have fought more fiercely than the hardest of men." *Id.*

70. The "battlefield" martyr appears to be the first type of religious martyr to be recognized by Muslims. KOHLBERG, *supra* note 24, at 282. The "battlefield martyr" is given a special status and this recognition seems to flow directly from the Qur'anic verses we have cited. Battlefield martyrs are accorded distinctive burial rites and there are some traditions that dispense with the need for a funeral prayer on their behalf because, in accordance with the previously cited provision of the Qur'an, they are considered to be still alive. Kohlberg, *supra* note 25, at 204-05.

71. Kohlberg, *supra* note 25, at 204-05.

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no reference to this kind of martyrdom in the Qur'an. The classification is based on statements of the Prophet Muhammad, as reported in *hadith* of varying degrees of authenticity. The Prophet's classification of these deaths as martyrs' deaths is indeed perplexing and appears at first blush to be somewhat haphazard and irrational. The apparent irrationality would also seem to minimize the ideological and theological importance of the battlefield classification.

The creation of a secondary class of martyrs may, however, be of considerable historical significance. Goldziher argued that the addition of these categories was designed to temper the fanatical rush to martyrdom that was common in the early days of Islam. By installing other categories, the Prophet and his wiser contemporaries perhaps sought to teach the new Muslims that faith and perseverance in everyday life could also lead to the same reward as battlefield heroics.<sup>72</sup> What really matters is the intention of the believer in his struggle with his inner self and his adversaries in life; not self-aggrandizing heroics. The extrapolation of a secondary class of martyrs from the *hadith* may also have been a product of the Sunni suspicion of fanatical and suicidal endeavors, a matter discussed in more detail shortly. In any event, the existence of "martyrs in the next life only" does not generate a significant discourse today, even among pious Muslims, except perhaps regarding those who are persecuted and killed by tyrants because of their religious beliefs.

### C. *The Classical Fiqh on Martyrdom and Suicide*

The classical *fiqh*<sup>73</sup> on martyrdom tracks the basic principles laid down in the Qur'an and the Sunnah. The classical *fuqaha*<sup>74</sup> did not author manuals or treatises devoted exclusively to the subject of martyrdom. Instead, much of the *fiqh*-material on martyrdom is found in chapters on *jihad* and funeral rites

72. See GOLDZIHHER, *supra* note 67, at 352-53.

73. *Fiqh* is an Arabic term of art used to describe the positive law in classical Islamic jurisprudence. See BERNARD WEISS, *THE SPIRIT OF ISLAMIC LAW* 120 (1998). *Fiqh* means "comprehension" or "understanding" in Arabic and is to be distinguished from *usul-al-fiqh*, "the roots of understanding," that is, the sources of the law, namely, the Qur'an and *Sunnah*. See Cyril Glasse, *fiqh*, in *THE CONCISE ENCYCLOPEDIA OF ISLAM*, *supra* note 15, at 126.

74. *Fuqaha* is the collective description of experts in Islamic law. WEISS, *supra* note 73, at 115-16.

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[*jana'iz*] in the legal treatises.<sup>75</sup> This is true for both the Sunni and the Shi'a *fiqh*. Although the Qur'anic verses and commentary on those verses by scholars are said to command the highest juridical authority, the bulk of the source material for the rules that the *fuqaha* developed concerning martyrdom came from the *hadith*. Wensinck, in his handbook on *hadith*, notes several hundred prophetic accounts that specifically concern martyrdom.<sup>76</sup> There are many more that tangentially touch upon the subject. Similarly, the Shi'a collections of *hadith* are replete with accounts of battlefield actions leading to martyrdom. Although the Sunni and Shi'a *fiqh* on *jihad* and martyrdom are very similar to each other, it appears that the Sunni jurists took a more rationalist, pragmatic approach to *jus in bello* issues in evaluating the behavior of Muslims involved in war.<sup>77</sup> They emphasized survival and victory rather than death.

75. See, e.g., MAHIUDIN ABU ZAKARIA YAHYA IBN SHARIF EN NAWAWI, MINHAJ ET TALIBIN: A MANUAL OF MUHAMMADAN LAW ACCORDING TO THE SCHOOL OF SHAFII 75 (E.C. Howard trans. from the French edition of L.W.C. Van Den Berg, Pakistan Educational Press 1977) (1914); 1 IBN RUSHD, THE DISTINGUISHED JURIST'S PRIMER: A TRANSLATION OF BIDAYAT AL-MUJTAHID 260-61, 277 (Imran Ahsan Khan Nyazee trans., 1994) (summarizing the position of the schools of law on burial practices in cases of martyrdom); IBN TAIMIYAH, 2 AL-MUNTAQA MIN AKHBAR AL MUSTAFA 71-72, 77, 79 (Beirut: Dar al-Fikr 1974) (discussing a collection of *hadith* on burial practices); 5 MUHAMMAD IBN YA'QUB KULAYNI, AL USUL MIN AL KAFI [AL FURU MIN AL KAFI] 1-64 (Tehran 1968-70) (providing treatise on Shi'a law of *jihad* with brief discussion of martyrdom); 6 MUHAMMAD IBN AL HASAN TUSI, TAHDHIB AL-AHKAM 121-68 (1960) (discussing law of *jihad* in Shi'a jurisprudence).

76. A.J. WENSINCK, A HANDBOOK OF EARLY MUHAMMADAN TRADITION 146-48 (Leiden: E.J. Brill 1971) (1927).

77. A modern example of this attitude can be found in the writing of the famous twentieth century Egyptian Sunni exegete Sayyid Qutb, in his commentary on the Qur'an. In discussing the verses of the Qur'an that give Muslims the right to wage war in self-defense, he cites verse 4:77 that provides: "Restrain yourselves and attend regularly to prayer (*salat*) and pay alms (*zakat*)." In his view, this verse was

. . . aimed at taming the insubordinate and rebellious nature of the early Arab Muslims. They had to learn to be patient and await instructions, rather than act impulsively and recklessly, as they used to do before Islam. For the new Muslim community to fulfill its great universal role, the desire for revenge and heedless reaction had to be brought under control, and left to the discretion of a trusted leadership which gave its decisions careful consideration and was duly obeyed — even though to do so would test the Arabs' impatient and impetuous nature . . . Thus a balance was struck in the consciousness of that pioneering community, between rashness and restraint, impulse and deliberation, fanaticism and rational compliance.

1 Sayyid Qutb, IN THE SHADE OF THE QUR'AN [FI ZILAL AL-QUR'AN] 206-07 (M.A. Salahi & A.A. Shamis eds. & trans., 1979). For a discussion of Sayyid Qutb's role in the twentieth-century Sunni revival, see *infra* notes 122, 182-85 and accompanying text.

Consequently, the “quest for martyrdom” and the proselytizing of believers to seek the eschatological rewards of martyrdom are not prominent themes in the Sunni juristic discourse on war. In fact, such desires were condemned by some of the Sunni classical jurists because they were associated with the Kharijite phenomenon,<sup>78</sup> and came close to suicide.<sup>79</sup> The Sunni tradition “contains sayings which are strong in their verdict against any possible relation between a man’s death and his own will.”<sup>80</sup> These same traditions prohibit wishing for death or wishing for an encounter with the enemy.<sup>81</sup> They commend those who avoid exposing themselves to danger.<sup>82</sup> Instead, the treatises and books of *fiqh*, relying on *hadith*, emphasize the distinctions that must be made in choices of weapons, the damage allowed to be inflicted on various categories of enemies, division of spoils, treatment of captives and prisoners of war, determination of exemptions from the obligation to take part in the *jihad*, protection of the lives of non-combatants, decision-making on tactics

78. See Lewinstein, *supra* note 25, at 83-84 (citing *hadith* compiled by Ahmad ibn Hanbal). The Kharijites were a group of rebels who sought to violently secede from the foundational Sunni Muslim community, arguing that their understanding of Islam was the only correct understanding and that anyone who disagreed with them was not a Muslim and eligible to be killed as an apostate. It was a Kharajite fanatic who killed the fourth Caliph, Ali ibn Abi Talib, the son-in-law of the Prophet Muhammad. This event contributed to the eventual schism between the Sunnis and the Shi’a communities. See also Brown, *Martyrdom in Sunni Revivalist Thought*, in SACRIFICING THE SELF, *supra* note 25, at 113. Brown argues that the quietism of the early jurists was a reaction to the militancy of early Islamic rebels. These jurists favored peace and quiet, even if it required submission to tyrannical rule. *Id.* at 109.

79. A.J. Wensinck, *The Oriental Doctrine of the Martyrs*, in MEDEDEELINGEN DER KONINKLIJKE AKADEMIE VAN WETENSCHAPPEN, Afdeeling Letterkunde Deel 53, Serie A at 153 (1922).

80. *Id.*

81. *Id.* at 153 nn.1-2 (citing BOUKHARI, *Tamanni*, (Book of Wishes) books 6 and 8). In book 6 the Prophet, on the authority of Sa’d bin Ubaid, is reported to have said: “None of you should long for death, for if he is a good man, he may increase his good deeds and if he is an evil-doer, he may stop the evil deeds and repent.” 9 SAHIH AL BOUKHARI 273 (F. Amira Zrein Maraji ed., Mahmoud Matraji trans., Dar al Fiker 1993). In book 8, the Prophet, on the authority of Abdullah bin Abi Aufa, is reported to have said: “Do not long for meeting the enemy, and ask Allah for safety [from all sorts of evil].” *Id.* at 273-75. See also 3 SAHIH MUSLIM 945, *ahadith* numbers 4313, 4314 (Abdul Hamid Siddiqi trans., 1971) (*ahadith* reported on the authority of Abu Huraira and Abu Nadr that the Prophet Muhammad condemned wishing for an encounter with the enemy).

82. Wensinck, *supra* note 79, at 153 (citing Imam Nawawi’s commentary on *hadith*).

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and strategies, and other practical issues.<sup>83</sup> Self-sacrifice was not favored and some jurists taught that profession of a false creed was “preferred to self-sacrifice.”<sup>84</sup>

Concomitantly, it should be noted that the general Islamic prohibition against suicide has always been strong. Although the Qur’anic provisions are inconclusive,<sup>85</sup> the *hadith* are very clear. The Prophet declared on many occasions that suicide is an unlawful act. In one example, he announced, “whoever kills himself (with a steel instrument, or something else) will be punished in the same manner in the fire of Hell.”<sup>86</sup> Juristic literature suggests that this punishment for suicide will be repeated endlessly.

In another example from the *hadith*, reported by Abu Huraira, a Muslim came to the Prophet and remarked on his admiration for another Muslim who appeared to be a brave warrior in battle. The Prophet disagreed and announced that the warrior would go to Hell. This confused the Muslims but, sure enough, the next day the brave warrior was severely wounded and, rather than seeking comfort from his fellow combatants, he fell on his sword, killing himself. The Prophet said: “A man may be seen to the people as if he were practising the deeds of the people of Paradise while in fact he is from the people of the [Hell] Fire, another may seem to [be] of the [Hell] fire, while in fact he is from the people of Paradise.”<sup>87</sup> There are two normative lessons to be drawn from this example — the one remarked upon by the Prophet, relating to the normative illusion some-

83. See, e.g., RUSHD, *supra* note 75 at 454-87; PETERS, *supra* note 53, at 9-57.

84. GOLDZIEHER, *supra* note 67, at 352.

85. There are four Qur’anic provisions that arguably touch upon suicide. See THE MEANING OF THE HOLY QUR’AN, *supra* note 9, at 2:54; 4:29; 4:66; 18:6. None are definitive and only 4:29 provides significant textual support for the prohibition against suicide. The verse provides: “Believers, do not devour each other’s wealth illegally, unless it be through trade which you conduct by mutual consent. Do not kill yourselves, for God is merciful to you.” The verse is primarily concerned with fair dealing in trade and the phrase “do not kill yourselves” could be interpreted as an exhortation against commercial practices that are deleterious to society. Even if the verse is interpreted as a prohibition against self-homicide, the pronoun “yourselves” [*anfusakum*] is used in the reflexive sense and thus the meaning is ambiguous. In Arabic the pronoun could just as easily refer to others in the group as well as the individual who is addressed — e.g., “do not kill each other.” See Rosenthal, *supra* note 22, at 241-43 for an extensive discussion of the linguistic problems in the interpretation of verse 4:29.

86. Rosenthal, *supra* note 22, at 244 (citing and quoting Bukhari, Ibn Hanbal, and an-Nasai).

87. 4 SAHIH AL-BOUKHARI 65-66 (Hadith No. 2898) (F. Amira Zrein Matraji ed., Mahmoud Matraji trans., 1993).

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times perpetrated by the apparently virtuous acts of the moral imposter — and the more obvious lesson that condemns suicide, even in the heat of battle.

One of the best examples of the principles outlined here comes from another account of a battlefield incident. Although the incident occurred after the death of the Prophet Muhammad, Muslims have also ascribed normative significance to it. The account describes the travails of Bara' ibn Malik, a brave and seasoned warrior for Islam. Bara' spent a good part of his adult life seeking martyrdom. This particular episode occurred in a battle against an army led by Musailamah (known as "Musailamah the Liar"), a man who also claimed to be a prophet of God. The battle occurred during the "Apostasy Wars" that closely followed the death of the Prophet. These wars were caused when rebellious tribes sought to secede from the new legal regime established by the new Islamic State, refusing to recognize the authority of Abu Bakr as the first Caliph and political successor to the Prophet.

Abu Bakr determined that he should put down the rebellion by force. In a particular battle involving Bara' ibn Malik, the enemy garrisoned itself in a fort and put up fierce resistance. The Muslims were taking many losses because they were unable to gain entry to the fort. Bara' volunteered to be catapulted over a parapet by his compatriots so that he could open the gates to the fort and allow the Muslims to enter.<sup>88</sup> He knew that he faced certain death in this endeavor but he proceeded with the plan anyway, probably out of his desire to be martyred.

The plan succeeded but, miraculously, Bara' was not killed. He was severely wounded, receiving eighty wounds from strikes of swords. One commentator's account suggests that he was denied martyrdom because he sought aggrandizement rather than the justice of God's cause.<sup>89</sup> His compatriots nursed him back to health. He complained to Abu Bakr about his failure to achieve martyrdom. Abu Bakr replied: "Strive for death and you will live!"<sup>90</sup>

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88. See 10 *THE HISTORY OF AL-TABARI: THE CONQUEST OF ARABIA* 105-34 (Fred M. Donner trans., 1993) (describing the wars against Musailamah). See also *id.* at 118 (recounting Bara' ibn Malik's episode).

89. See *KHALID MUHAMMAD KHALID, MEN AROUND THE MESSENGER* 387-92 (Millat Book Centre n.d.)

90. *Id.* at 390.

The lesson of this episode points out the differences between battlefield heroism for the sake of aggrandizement and true martyrdom, as well as the difference between suicide and martyrdom in service of the cause. The actions of Bara', although not suicidal, might be seen as heroically self-annihilatory because he knew that he faced certain death in seeking to be catapulted over the parapet. Yet, his actions are condemned because he sought self-aggrandizement through death rather than the purity of advancement of the cause, which might also require his death, but only incidentally or instrumentally. This distinction is important because it focuses on the actor's intention rather than the result of the action.<sup>91</sup>

The Sunni jurists also made it clear that devout private expressions of faith and personal sacrifice, such as pious worship, fidelity to parents, and obedience to the ruling government, even if that government is unjust, would be rewarded in ways similar to the rewards given to the martyrs.<sup>92</sup> The Sunni jurists even counseled against undertaking a *jihad* where the Muslims are outnumbered by more than two to one.<sup>93</sup> The Shi'a *fiqh* differed on this point, counseling that steadfastness in such circumstances is a must, even when the *jihadist* is faced with ruin and certain death.<sup>94</sup>

The above review of the Sunni *fiqh* reveals that the Sunni discourse on war contained no great emphasis on martyrdom and there was no martyrology or martyrdom *oeuvre*, such as we find in the Shi'a discourse on war, to which we now turn.

91. See *infra* notes 181-95 and accompanying text.

92. See GOLDZIHNER, *supra* note 67, at 353-54. My review of the sources cited by Goldziher confirms that these sources argued that the heavenly rewards of pious worship would be abundant but none of them, so far as can be determined, make an explicit comparison to martyrdom. I am indebted to Basem Ramadan for assistance in exploring the sources cited by Goldziher.

93. Peters, *supra* note 53, at 9, 38 (quoting an opinion of Ibn Rushd (Averroes) in his manual, *Bidayat al-Mujtahid wa-Nihayat al-Muqtasid*, published in 1167 in Cordova, Spain).

94. 7 MUHAMMAD HASAN IBN BAQIR NAJAFI, *Jawahir al Kalam fi Sharh Shara'i' al Islam* 519-21 (1992) (interpreting and commenting on the classical *fiqh* as announced by Muhaqqiq al-Hilli and others) The Shi'a *fuqaha* cite verse 8:45 and the example of Imam Husayn, to be discussed shortly. See THE MEANING OF THE HOLY QUR'AN, *supra* note 9, at 425 (translating QUR'AN, verse 8:45 as "O Ye who believe! When ye meet a force be firm, and call Allah in remembrance much [and often]; that ye may prosper").

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D. *The Martyrdom of Imam Husayn and the Shi'a  
View of Martyrdom*

The battlefield martyrdom of Husayn, the son of the fourth Caliph, Ali, and the grandson of the Prophet, is an important event in Islamic history generally and a pivotal event in Shi'a history. Husayn's death is the defining paradigm in the Shi'a conception of martyrdom. There is no comparable event in the Sunni religio-political history. Husayn's thought process, his declarations to his followers in the days before his death, and his self-sacrificing behavior on the battlefield at Karbala are the examples by which the Shi'a judge all subsequent acts of martyrdom by Muslims. The Shi'a often refer to Husayn as *As-Sayyid al-Shuhada* [The Lord of the Martyrs].<sup>95</sup> The Shi'a martyrology around Husayn thus became a virtual genre in Shi'a theological and juristic literature and it has come to dominate the approach of modern Shi'ite jurists to *jihad*.

The story of the martyrdom of Husayn is well known and often told. In the year 680 CE, a half century after the death of the Prophet Muhammad, Husayn and a small following of his companions were massacred and mutilated by Sunni forces at Karbala, a desert encampment on the banks of the Euphrates, in central Iraq. Husayn was killed at the behest of Yazid, the Sunni Umayyad Caliph who ruled from Damascus and inherited the Caliphate from his father, Mu'awiya. Twenty years earlier, Mu'awiya had essentially wrenched the Caliphate from Husayn's father and the son-in-law of the Prophet, Ali ibn Abi Talib. Mu'awiya moved the seat of the Caliphate from Kufa in Iraq to Damascus in Syria. His administration brought great prosperity to the new Islamic State in spite of the dissension.<sup>96</sup> The resent-

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95. HAMID ENAYAT, *MODERN ISLAMIC POLITICAL THOUGHT* 182 (1982); Dr. Ali Shari'ati, *A Discussion of Shahid*, in *JIHAD AND SHAHADAT*, *supra* note 57, at 239. The Sunnis also often use the same language in referring to Husayn. By way of example, the words *As-Sayyid al-Shuhada* are inscribed on the tomb reputedly encasing Husayn's head in the Sunni mosque of Al-Husayn in Cairo, Egypt.

96. See ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* 25-26 (1991); see generally Laura Veccia Vaglieri, *The Patriarchal and Umayyad Caliphates*, in *1A THE CAMBRIDGE HISTORY OF ISLAM* 77-78, 57-103 (P.M. Holt et al. eds., Cambridge University Press 1977) (1970). Mu'awiya's twenty-year administration of the Caliphate was, by most accounts, an admirable one. Even those Shi'a historians who indict Mu'awiya as a religious heretic and illegitimate political leader who persecuted the Shi'a acknowledge that his administration of the Caliphate did much for the new Islamic Empire. He exhibited great diplomatic and political skill and a superior knowledge of military methods and strate-

ment of the Shi'a factions in Kufa, the old seat of Ali's Caliphate, still simmered, however, despite the Umayyad prosperity. Mu'awiya managed to keep a lid on this with deft manipulation of competent governors, public and apparently sincere kindness toward his former enemies, and "intelligent generosity."<sup>97</sup>

It does not appear that Husayn engaged in much political activity during the reign of Mu'awiya. Although the dissident Shi'a recognized Husayn as their *Imam* after the death of his brother Hasan, political conditions were difficult. Husayn wisely bided his time quietly in Medina, waiting for Mu'awiya to die. Mu'awiya also had great concerns about the question of succession to the Caliphate after his death. He encouraged everyone around him to recognize his son, Yazid, as the next Caliph. Unfortunately, Yazid was not the man his father was. He was a womanizer, a public drinker of alcohol, materialistic, egoistic, and given to corruption, irreverence, and brazen excess.<sup>98</sup> His reign over the Caliphate would be short-lived.

Mu'awiya died in April 680 CE at the age of eighty. The Damascene notables proclaimed Yazid to be the new Caliph. There was immediate opposition and Husayn began to receive entreaties from the Shi'a of Kufa to return to Iraq where he could organize the base for a successful revolt against the corrupt and decadent Sunni Caliph in Damascus. Husayn accepted the invitation, but there was a very real prospect of an overwhelming military defeat if he were to travel to Kufa. The Kufans were also notorious for their unreliability in time of crisis. These factors caused many of Husayn's advisors — among them some of the most venerated Companions of the deceased Prophet — to advise him not to make the journey.

Husayn refused to follow this advice, telling his counselors

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gies. There was internal peace, a strong, centralized governing apparatus in Damascus, and an orderly but rapid expansion of the Islamic empire into Egypt, North Africa, the Maghreb, the Caucasus, and the Punjab. Mu'awiya incorporated the pre-existing Byzantine tax and civil administrative structure into his Damascene government and the Arab core of the Caliphate, especially the military aristocracy, prospered and flourished. *Id.*

97. Vaglieri, *supra* note 96, at 80.

98. SYED HUSAIN MOHAMMAD JAFRI, *ORIGINS AND EARLY DEVELOPMENT OF SHI'A ISLAM* 174 n.1, 174-75 (1989) (citing Muslim historians, including Jahiz, Baladhuri, Mas'udi, Damiri, and Yaqubi). I have not found references to this behavior in the history of Tabari. *See also* PHILIP KHURI HITTI, *HISTORY OF THE ARABS: FROM THE EARLIEST TIMES TO THE PRESENT* 191 (St. Martin's Press 2002) (1951) (describing Yazid as "well known for his frivolity and dissipation").

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that the matter had been decided by God and that it did not matter whether he followed their advice or not. In spite of the clear political and military dangers that awaited him, Husayn set out for Kufa from Mecca on the next to last day of the pilgrimage season, after completing a shortened pilgrimage. Only his family and a small band of companions accompanied him on the road to Kufa.<sup>99</sup> In a short speech given just prior to his departure, he told the Muslims in Mecca that he knew he would be martyred and that they too should offer their lives in “the path of God.”<sup>100</sup>

Husayn never reached Kufa. After several days of traveling, he and his party camped at Karbala, about one day’s journey from Kufa. Yazid’s forces, led by the governor of Kufa, Ubaydallah, instantly surrounded them. The siege lasted eight days. Husayn’s band, estimated to be less than 100 people, including 32 horsemen and 40 foot soldiers, were surrounded by tens of thousands of Yazid’s soldiers.<sup>101</sup> Yazid’s governor offered compromises aimed at saving Husayn’s life and preserving Yazid’s rule, but Husayn refused all his offers. It was at Karbala, when it appeared that he and his small band of followers were facing certain death, that Husayn defined the meaning of martyrdom for the Shi’a for generations to come. The Muslim historian al-Tabari, gives the account of Husayn’s speech to his followers the night before his death, in which Husayn gives his view of his own mission and fate:

You see what this matter has come to. Indeed, the world has changed, and it has changed for the worse. Its goodness has retreated, and it regards good as bitter. Or, there remain only the dregs like the dregs in a jar, sordid nourishment like unhealthy fodder. Can you not see that truth is no longer something that men practice and falsehood is no longer desisted from, so that the believer rightly desires to meet God. I

99. Perhaps still the best description of Husayn’s decision-making and his subsequent martyrdom is al Tabari’s spare and precise account in his *Ta’rikh al-rusul wa’l muluk* [*History of Prophets and Kings*], written in the late 9th and early 10th centuries. See 19 TABARI, *THE HISTORY OF AL-TABARI: THE CALIPHATE OF YAZID B. MU’AWIYAH 65-162* (I.K.A. Howard ed. & trans., 1990).

100. ‘ALLAMAH SAYYID MUHAMMAD HUSAYN TABATABA’I, *SHI’ITE ISLAM 197-200* (Seyyid Hossein Nasr ed. & trans., 2d ed., State University of New York Press 1977) (1975) [hereinafter *TABATABA’I, SHI’ITE ISLAM*].

101. JAFRI, *supra* note 98, at 188-89. Ammar al Duhni’s account in TABARI puts the figure at forty-five horsemen and 100 foot soldiers. TABARI, *supra* note 99, at 75.

can only regard death as martyrdom (*shahadah*) and life with these oppressors as a tribulation.<sup>102</sup>

Husayn's reference to martyrdom as the only choice in the face of oppression and tyranny has come to dominate the Shi'a view of *jihad*. Husayn realized that he had a great and undeniable religious and historical mission — to reject the compromises offered by the corrupt and venal Yazid and to gladly and unselfishly sacrifice his life. He determined that, through his actions, he could exemplify the truth and rightness of the Shi'a cause and, ultimately, the cause of the entire Muslim community. His decision was not the happenstance result of untoward battlefield circumstances, but rather the result of a conscious and deliberate desire, formed even before he left Mecca, to sacrifice himself for God in the struggle against tyranny, oppression, and injustice. Husayn and all of his seventy-two fighters were indeed massacred.<sup>103</sup> Husayn's head was severed and his body deliberately trampled and mutilated by Umayyad horsemen. Jafri describes the scene two days after the defeat:

The morning of 12 (twelve) Muharram saw a peculiar procession leaving Karbala for Kufa. Seventy-two heads were raised on the points of lances, each of them held by one soldier, followed by the women of the Prophet's family on camels and the huge army of the Umayyads. [The lamentations of the Prophet's family] at the sight of the massacred bodies of their sons, brothers, and husbands which were lying uncovered in front of them, caused even their enemies to shed tears.<sup>104</sup>

Since then, on the anniversary of the massacre, a day known as *Ashura*, and on the fortieth day after *Ashura*, the Shi'a commemorate and mourn the martyrdom of Husayn. In the Shi'a worldview, the drama of Husayn's martyrdom ranks next in im-

102. TABARI, *supra* note 99, at 96.

103. TABATABA'I, *SHI'ITE ISLAM*, *supra* note 100, at 197-200. There were three male survivors: Husayn's son Ali, who was ill and hidden among the Shi'a women and children; Muhammad, Husayn's four-year-old grandson; and Husayn's son-in-law who played dead and was later rescued by a benevolent officer in Yazid's army. Ali later became the fourth Shi'a *Imam* and Muhammad became the fifth *Imam*. *Id.* at 199-200.

104. JAFRI, *supra* note 98, at 193. The head of Husayn was placed on a tray in a court ceremony at Kufa and then erected in a public display. Eventually the Umayyads delivered it to Yazid in Damascus. *Id.* at 194. The head is reputed to be presently entombed in the Mosque of Husayn in Cairo, Egypt. The mosque today is an important center of worship in the popular religion, even among Sunnis. *See, e.g.*, CAROLINE WILLIAMS, *ISLAMIC MONUMENTS IN CAIRO: THE PRACTICAL GUIDE* 193-94 (2002).

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portance only to the Prophet's investiture of Ali as his successor.<sup>105</sup> His martyrdom is seen as superior to all other martyrdoms. It is to be emulated by all other Muslims, primarily because he understood his divine purpose and his role in human history, and he acted on it in a way that only a few other historical figures have done.

For the Twelvers, the sect representing the majority of Shi'a adherents in the Islamic world,<sup>106</sup> the paradigm of the martyrdom of Husayn is particularly powerful. As Juan Cole has noted, the Twelvers

frequently mourned the martyred *Imams* or scions of the Prophet's House, especially Husayn. In Nabatiya, these rituals came to be especially bloody, involving public self-flagellation. Such rituals included not only the self-affirmation of pledging fealty to the Twelve *Imams*, but also the cursing of the early Caliphs, whom they saw as usurpers. Sunnis felt that the Twelvers, in insisting on such cursing, kept a dirty little secret. Their ceremonies, in this view, had at their core a mysterious blasphemy. For Twelvers, however, the ritual mourning of Imam Husayn carried with it a dual message, of patient perseverance in the truth even unto martyrdom, and of courageous battle with steel against tyranny. At various times, either of these Janus heads might be emphasized.<sup>107</sup>

105. ENAYAT, *supra* note 95, at 181 (1982); *see also* HAMID ALGAR, THE ROOTS OF THE ISLAMIC REVOLUTION 11-13 (1983); MOMEN, *supra* note 14, at 31-33.

106. TABATABA'I, SHI'ITE ISLAM, *supra* note 100, at 82-83. The phrase "Twelver Shi'a" [*Ithna ashari*] describes those who believe that the Muslim *Imamate* consists of twelve *Imams*, all descended from Ali. The last of these *Imams*, described by the Twelvers as *Sahib al-Zaman* [Lord of the Age], was the son of the eleventh *Imam* and hidden from public view during the life of his father, Imam Hasan ibn Ali 'Askari. The Twelvers believe that the child was the *Mahdi* or "The Expected Deliverer" prophesied by the Prophet Muhammad. On the death of his father, in 872 CE, he disappeared. The Twelver Shi'a calls this disappearance the "occultation." They believe that, in accordance with a widely cited *hadith* of the Prophet Muhammad, the *Mahdi* will reappear at the end of time and "fill the earth with equity and justice as it was filled with oppression and tyranny." *Id.* at 211.

There are several other major Shi'a communities that have played an important role in the history of Shi'ism. Among them are the Isma'ilis, the Zaidis, and the Idrisids. These communities emerged from the subdivision of the Shi'a into separate theological and political groupings after the death of Husayn. The divisions roughly center around competing views of the role of the *Imamate* and the number of *Imams* who are entitled to lead the Muslim community. Shi'ism did not undergo any divisions during the *imamate* of the first three *Imams*: Ali, Hasan, and Husayn.

107. JUAN COLE, SACRED SPACE AND HOLY WAR: THE POLITICS, CULTURE AND HISTORY OF SHI'ITE ISLAM 21 (2002). Janus was the ancient Roman god who presided over the beginning of human life. He had two faces, one facing east, the other facing west.

E. *The Early "Twelver" View of Martyrdom and the Advent of European Colonialism*

In spite of these powerful ideas, for hundreds of years the Twelvers did not commemorate the martyrdom of Husayn as an event having political or militant implications. The pre-nineteenth century political and juridical history of Twelver Shi'ism is largely dominated by a philosophy of pragmatism and quietism. Although the paradigm of Husayn's martyrdom remained a potent force for all Shi'a, especially the Nizari Isma'ilis,<sup>108</sup> the Twelvers, led by their *ulama*, largely followed a practice of pious withdrawal from politics, preferring instead to seek compromise and dissimulation in their relationship with their Abbasid, Mongol, Ottoman, and Czarist colonial masters.<sup>109</sup>

The Twelver ceremonies commemorating the death and martyrdom of Imam Husayn were, until the late-twentieth century, dominated exclusively by demonstrations of mourning, weeping, and self-flagellation.<sup>110</sup> These ceremonies celebrated the merit of weeping and the achievement of salvation through grief and suffering. The Twelver view of Husayn's martyrdom

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*See, e.g.,* WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE 918 (2d ed. 1972).

108. The Nizari Isma'ilis were progenitors of the eleventh century military order that often conducted suicide missions against their enemies and came to be known as the "Assassins." *See generally* BERNARD LEWIS, *THE ASSASSINS: A RADICAL SECT IN ISLAM* (1967); MARSHALL G.S. HODGSON, *THE ORDER OF ASSASSINS: THE STRUGGLE OF THE EARLY NIZARI ISMA'ILIS AGAINST THE ISLAMIC WORLD* (1955); EDWARD BURMAN, *THE ASSASSINS* (1987); FARHAD DAFTARY, *THE ASSASSIN LEGENDS: MYTHS OF THE ISMA'ILIS* (1994). Daftary notes that the paradigm of the martyrdom of Husayn played a strong role in encouraging Isma'ili *fida'i* [self-sacrificing devotees] to accomplish their missions. *Id.* at 98.

109. The history of the relationship between Twelver Shi'a *ulama* and the demands of temporal politics is complex. Choosing political compromise was just one of the options chosen by Twelver *ulama* over the years. Momen suggests that the Shi'a *ulama* tended to pursue three kinds of actions when faced with colonial or other governmental political demands: (1) political co-operation; (2) political activism; and (3) political aloofness. The great majority chose to remain aloof or to cooperate with the government of the day. MOMEN, *supra* note 14, at 191-96.

110. The tenth-century Buyid dynasty in Iran vigorously encouraged these outpourings of grief. The Safavid dynasty in sixteenth century Iran, the first Islamic rulers to establish Shi'ism as a state religion, introduced the *ta'ziyah* [passion play depicting Husayn's martyrdom] and strengthened the *rawdah khani* [recitation of the sufferings of holy martyrs] and other re-enactments that extolled the virtues of sacrifice and redemptive suffering. ENAYAT, *supra* note 95, at 181-82. Enayat points out that the Shi'a *ulama* disapproved of many of these ceremonies and re-enactments as "crude dogma." *Id.* at 181-82 n.45.

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that prevailed for many years has been compared to the Christian view of the crucifixion of Jesus Christ, in that Husayn died to purify the Muslim community of its sins and to vindicate the Shi'i cause.<sup>111</sup> As Hamid Enayat has observed, the concepts of atonement and redemption through suffering prevailed over militant assertions of the cause.<sup>112</sup> Weeping, rather than political indoctrination, came to be "the sole aim of all reminiscence of Husayn."<sup>113</sup>

In the political sphere, with the advent of European colonialism, the policy of quietism practiced by the Twelver *ulama* gradually began to change. The policy of quietism had its roots in the Twelver doctrine of the "occultation" of the Hidden Imam. This doctrine posited that, in the absence of the *Imam*, all of his functions, including his political functions, had lapsed. The *ulama* were therefore legally powerless to act in political matters. Encouraged by the earlier theoretical writing of leading medieval Shi'a scholars like al Tusi and Muhaqqiq al Hilli, and reacting to changing conditions, the fourteenth and fifteenth century *ulama* became increasingly involved in taking up functions that were previously thought to be off limits because they were the exclusive province of the absent *Imam*. The advent of the Safavid dynasty in Iran in 1500 established Twelver Shi'ism as the official religion of the monarchy. In 1558, Shahid at-Thani [The Second Martyr], a religious scholar of some import, declared that all of the judicial functions of the Hidden Imam could henceforth be performed by the *ulama*. In his view the *ulama* could even declare and lead a defensive military *jihad* if the situation called for it.<sup>114</sup>

This change in policy was put into place during the Qajar dynasty (1794-1909) with varying results. During the first Russo-Iranian war (1804-13), the Qajar monarchy obtained a declaration of a defensive *jihad* against the invading Russians from the local *ulama*. This was undoubtedly helpful in dealing with Russian imperial initiatives.<sup>115</sup> Between 1804 and the late twentieth century, there were a number of other occasions where the *ulama* were asked to declare *jihad*s against colonial, imperialist,

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111. *Id.* at 183.

112. *Id.*

113. *Id.*

114. MOMEN, *supra* note 14, at 189-91.

115. *Id.* at 191.

or unpopular indigenous regimes, but none of these instances resulted in any sustained Islamist initiative.<sup>116</sup> The majority of the Twelver *ulama* by and large consistently returned to a policy of quietism and avoidance of involvement in politics until the 1960s.

#### IV. THE NAJAF RENAISSANCE AND THE EMERGENCE OF A NEW THEOLOGY OF MARTYRDOM

The dominant policy of quietism and passivity preached by the Shi'a *ulama* came to an end in the 1960s in Najaf, Iraq, the site of the tomb of Ali and, for the last millennium, a place for pilgrimage and religious study for Shi'i adherents in the south of Iraq and in Iran.<sup>117</sup> Perhaps the single most important precipitating event leading to this change in policy occurred in 1963, when the Ba'ath party took power in Baghdad and, over the next few years established a new order, ruthlessly eliminating any secular or religious opposition. Eventually the Ba'ath government coalesced around a Takriti oligarchy led by Saddam Hussein.<sup>118</sup> Even though Iraq enjoyed an oil boom and the Sunni aristocracy in Baghdad profited handsomely from the country's economic success, the Shi'a in the south remained relatively impoverished

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116. The most commonly cited instances are the subsequent Qajar revolts against the Russians, the Iranian "Tobacco Revolt" of 1891, the Iranian Constitutional Revolution of 1905-1909 against the government of the Shah, and the 1920 uprising of Iraqi *ulama* in Najaf against British colonial initiatives. See *The Great Iraqi Revolution 1920*, at [www.onwar.com/aced/nation/ink/iraq/firaq1920.htm](http://www.onwar.com/aced/nation/ink/iraq/firaq1920.htm) (describing the 1920 uprising). See also IRA M. LAPIDUS, A HISTORY OF ISLAMIC SOCIETIES 575-77 (1988) for descriptions of the pre-1920 conflicts.

117. Najaf had been, for centuries, the site of numerous theological colleges and institutes. The faculty in these colleges taught the principles of the Twelver (*Jafari*) school of Islamic jurisprudence. Shi'a jurisprudence places great emphasis on the role of the *mujtahid* [one entitled to give legal opinions] in the development and application of Islamic law. The Sunni jurisprudence permits the individual Muslim to draw his or her own conclusion on questions of legal interpretation of texts and applications of principles of jurisprudence to new situations. The Sunni adherent must seek advice from other knowledgeable Muslims, including the *mujtahid*, but the decision is ultimately that of the individual. The Shi'a jurisprudence, by contrast, mandates that the individual Shi'a Muslim follow the advice of the *mujtahid* without dissent. The Shi'a juridical system is hierarchical and the chief *mujtahid* holds the title *marj' al taqlid*, or "the source of imitation." He is the highest source of legal knowledge in Shi'i legal system and his words and deeds serve as a guide for those who are unable to exert *ijtihad*. ENAYAT, *supra* note 95, at 162.

118. R. HRAIR DEKMEJIAN, ISLAM IN REVOLUTION: FUNDAMENTALISM IN THE ARAB WORLD 121 (2d ed., Syracuse Univ. Press 1995) (1985).

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and the target of discrimination and oppression.<sup>119</sup> There was also a steady rise in communist influence, especially among the disaffected Arab Shi'a. These events greatly disturbed the *ulama* in Najaf.

Several important *ulama* in Najaf used this situation to put forth new ideas that they had been developing in their lectures, *hawza* meetings,<sup>120</sup> and monographs. The intellectual or theological sources of these new ideas are varied and somewhat difficult to identify. There was a similar discourse occurring in the Sunni world, most prominently at the behest of the Muslim Brotherhood in Egypt, led by the ideas of Hassan al-Banna<sup>121</sup> and Sayyid Qutb.<sup>122</sup> It does not appear that these ideas received

119. *Id.*; see also GRAHAM E. FULLER & REND RAHIM FRANCKE, *THE ARAB SHI'A: THE FORGOTTEN MUSLIMS* 87-117 (1999).

120. A *hawza* is a circle of Shi'a Islamic scholars. See, e.g., Stephen J. Glain, *Reviving an Iraqi Institution*, *THE BOSTON GLOBE*, July 13, 2003, at C1.

121. Al-Banna, a charismatic Egyptian disciple of nineteenth-century modernists Jamal al Din al Afghani and Muhammad 'Abduh, founded the Muslim Brotherhood organization in Egypt in 1928. His purpose for the organization was to bring a pan-Islamic vision to political, social, and economic life. Dekmejian has called him "the avatar of twentieth-century Sunni revivalism." DEKMEJIAN, *supra* note 118, at 74. Al-Banna, a layman, wrote scintillating political tracts and gave strident speeches advancing the organization's platform. The organization soon became a powerful social force in Egyptian life. After World War II, the organization became increasingly militant and anti-governmental, and was eventually banned. Al-Banna was assassinated in 1948. The organization was a key factor in the Free Officers' Movement's successful overthrow of the Egyptian monarchy in 1952 and the installation of the Nasser government. Since then, its fortunes have waxed and waned and today it is officially still banned yet unofficially tolerated by the Mubarak government. See generally RICHARD P. MITCHELL, *THE SOCIETY OF MUSLIM BROTHERS* (1969); ANTONY BLACK, *THE HISTORY OF ISLAMIC POLITICAL THOUGHT: FROM THE PROPHET TO THE PRESENT* 308-24 (2001); DEKMEJIAN, *supra* note 118, at 73-84. R

122. Sayyid Qutb's career began as a teacher, poet, literary critic, and writer. Born in 1906 in Assuit, Middle Egypt, his early "pre-Brotherhood" life was consumed with grappling with and publishing critical interpretations of some of the main Egyptian contributions to Arabic literature, especially the work of Taha Hussein. In the 1940s, he increasingly devoted his attentions to religious ideas and problems with the Egyptian education system. Like al-Banna, he began to offer radical Islamic solutions to the massive problems in Egyptian society and he became an ardent critic of Western colonialism, especially its methods of education. He visited America on an educational program in the late 1940s and was disgusted with the permissiveness that he observed in American society. He returned to Egypt and authored a number of important books, including *SOCIAL JUSTICE IN ISLAM*, *MILESTONES*, *THIS IS THE RELIGION*, and others. These books became very popular and were translated into a variety of languages. In them he passionately argued for the institution of an aggressive *jihad* and a radical transformation of Islamic society on the basis of the teachings of Ibn Taymiyya, Ibn Hazim, and the modernist ideas of Hasan al Banna and Syed Abu al-A'la Maududi of Pakistan. He regarded twentieth century Arab governments as *jahili* [throwbacks to the R

wide dissemination in Iraq or Iran. Instead, the discourse in Najaf, led by Ayatollah Muhammad Baqir al-Sadr,<sup>123</sup> an Iraqi jurist, centered on a reinterpretation of Shi'a history and the role that Shi'ism should play in relation to the larger Islamic community.<sup>124</sup> The Najaf *ulama* began to argue that the Shi'a had the responsibility for saving the Islamic *umma* from the oblivion and

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pre-Islamic "days of ignorance"], and he asserted that all Muslims have a duty to resist and combat the sinfulness, injustice, oppression, and suffering that such governments have caused. For him, *jihad* was the key to freedom for Muslims. Qutb naturally became an avowed critic of the Nasser government and was twice imprisoned. While in prison, he authored a masterful exegesis of the Qur'an, *IN THE SHADE OF THE QUR'AN*. This commentary also posits a pan-Islamic vision for all of human society. He continued his criticism of the government from prison and, in 1966, after he refused the offer of the post of Minister of Education in the Nasser government, Nasser ordered his execution for treason. See generally IBRAHIM M. ABU-RABI', *INTELLECTUAL ORIGINS OF ISLAMIC RESURGENCE IN THE MODERN ARAB WORLD* (1996); Muhammad Qutb, *Forward to IN THE SHADE OF THE QUR'AN*, *supra* note 77; Sayyid Qutb, *Introduction to id.*; BLACK, *supra* note 121, at 319-24; DEKMEJIAN, *supra* note 118, at 84-88.

123. Muhammad Baqir al-Sadr was born in 1931, in the Iraqi holy city of Kazymiya, to one of the three most prominent clerical Shi'a families in Iraq. The al-Sadr family had been prominent in Shi'a religious circles since the founder of the family, Sadr al-Din, arrived in Kazymiya from Lebanon in the eighteenth century and established himself as a religious authority. Muhammad Baqir's father, Sayyid Haidar, was a *mujtahid*, as was his grandfather, Isma'il, and older brother, also named Isma'il. It was the younger Isma'il who, along with his very religious mother (whose father and three brothers were also clerics), raised Muhammad Baqir from the age of four, after the untimely death of Sayyid Haidar.

His formal education began at Imam al-Jawad, a religious primary school in Baghdad where he was considered a precocious student. He then moved on to Najaf where he trained under his uncles, his older brother, and Ayatollah Muhsin al-Hakim. Again, he excelled in school and began teaching *fiqh* at an early age. Over the course of his life he published numerous books and was the only Arab among the eight living Shi'a *maraji'* of his time, yet, he lived in a small house in a poor section of Najaf. When he was hanged on April 8, 1980, he left behind four children, his widow, and his mother. He was subsequently given the title *Shahid al-Rabi'* [the Fourth Martyr]. JOYCE N. WILEY, *THE ISLAMIC MOVEMENT OF IRAQI SHI'AS* 76-77, 77 n.9 (1992). The Shi'a community's designation of Baqir al-Sadr as "the Fourth Martyr" is the first such instance involving conferral of the posthumous title since the sixteenth century. *Id.* at 98. See also *infra* notes 150-77 and accompanying text.

124. The best examples of this discourse are the written works of Baqir al-Sadr. He published more than thirty-five books and numerous pamphlets and broadsides. His books, especially *FALSAFATUNA* [OUR PHILOSOPHY] (1959), and *IQTISADUNA* (1960), as well as his lectures were widely influential. These works put forward an exclusively Shi'i view of the world and championed the virtue of the Shi'a *Imamate* in advancing a social revolution that would free Muslims from the yoke of tyranny and oppression. In many ways, his arguments were similar to those of Qutb and al-Banna but they drew upon somewhat different sources. See generally CHIBLI MALLAT, *THE RENEWAL OF ISLAMIC LAW: MUHAMMAD BAQER AS-SADR, NAJAF AND THE SHI'I INTERNATIONAL* (1993); Hanna Batatu, *Iraq's Underground Shi'a Movements: Characteristics, Causes and Prospects*, 35 *MIDDLE E. J.* 578, 578-80 (1981).

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perdition caused by secularism and colonialism. The Shi'a must take history back into their own hands instead of allowing errant Sunnis and their infidel colonial masters to decide the destiny of the Muslim community. This responsibility meant that there should be a new Shi'i internationalism, an Islamic revolution, a reinterpretation of the doctrines of *jihad* and *shahadah* [martyrdom] and a revival of the original Shi'a view of the martyrdom of Husayn.<sup>125</sup> Although some have compared the Shi'a revival in Najaf to the Sunni revival occurring at that time in Egypt, there were profound differences in the two sets of events and these differences help to explain how the Shi'a view of martyrdom came to dominate the Islamic *jihadist* discourse.<sup>126</sup>

A. *The Ba'ath Government Suppresses the Shi'a Renaissance in Najaf*

The ideas put forward by the *ulama* in Najaf were new and profoundly powerful. They resulted in the formation of a new political party in Iraq, the *Hizb al-Da'wah al-Islamiyyah* [The Party of Islamic Call]. Baqir al-Sadr certainly provided the inspiration for the new party if not its actual guidance and direction.<sup>127</sup> He was an important influence in the development of the ideas of Muhammad Husayn Fadlallah, later to become spiritual guide of *Hizb'ullah*, the militant Lebanese Islamist organization, and Ruhollah Khomeini, later to become the visionary leader of the Iranian Islamic Revolution. Khomeini arrived in Iraq in 1965, having been exiled from Iran, and he collaborated with Baqir al-Sadr over the next thirteen years. Fadlallah was born and raised in Najaf, joining Baqir al-Sadr's *hawza* at the age of eleven and remaining with it until he left Najaf for Lebanon twenty-two years later.

The *Da'wah* party objected to many of the secularist and

125. For further explanation, see Ayatollah Sayyid Mahmud Taleqani, *Jihad and Shahadat*, in *JIHAD AND SHAHADAT*, *supra* note 57, at 47, 47-80; Ali Shari'ati, *A Discussion of Shahid*, in *JIHAD AND SHAHADAT*, *supra* note 57, at 230-43. See also Legenhausen & Abedi, *supra* note 57, at 1-33. See also ENAYAT, *supra* note 95, at 181-94.

126. See *infra* notes 181-95 and accompanying text.

127. See DEKMEJIAN, *supra* note 118, at 121 n.4. Dekmejian notes, citing Arabic sources, that there is a dispute about Ayatollah Baqir al-Sadr's role in establishing the *Da'wah* party; see also T.M. Aziz, *The Role of Muhammad Baqir Al-Sadr in Shi'i Political Activism in Iraq from 1958 to 1980*, 25 *Int'l J. of Middle E. Stud.* 207, 209 (1993) (citing the author's personal sources and published sources that suggest that Ayatollah al-Sadr was introduced to the party leadership but then took over an important role in setting party structure and doctrine, ultimately becoming its supreme juriconsult [*faqih al hizb*]).

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anti-sectarian policies of the Ba'ath government, which included selling pork, State control of Islamic schools, closing down of Islamic publications, obstructing mosque repairs, and persecuting Shi'ite clergy.<sup>128</sup> In 1968, Ni'matollah Salihi Najaf-adabi, a student of Khomeini, published a pamphlet, in Persian, entitled *Shahid-e Javid* [*The Eternal Martyr*], interpreting Husayn's martyrdom at Karbala as a political uprising to be emulated by all Shi'a.<sup>129</sup> In 1974, *Ashura* processions in Iraq commemorating the martyrdom of Imam Husayn erupted into violent political protests against the Ba'ath government.<sup>130</sup> By 1977, the Iraqi government had essentially banned the *Ashura* processions, and there were widespread arrests, political trials, and executions of Iraqi Shi'a.<sup>131</sup> These events are among the first items of tangible evidence of the power of the Shi'a *ulamaic* reinterpretation of the idea of the martyrdom of Imam Husayn. They differ from the events occurring in the Sunni world in that they involved mass action. They were also the direct result of an intense discourse on *jihad*, martyrdom, and Islamic government occurring in the colleges and institutes in Najaf. Baqir al-Sadr, Khomeini, and Fadlallah were at the center of this discourse.<sup>132</sup>

B. *Imam Khomeini, Muhammad Baqir al-Sadr, and the Islamic Revolution in Iran*

The events that brought Khomeini to Iraq were cataclysmic.<sup>133</sup> For many years, he had vehemently criticized the Pahlevi regime in Tehran for being un-Islamic and unjust and his example caused many other clerics to follow him, abandoning the official clerical policy of quietism. In 1963, the Pahlevi regime sent paratroopers into a *madrasa*<sup>134</sup> in Qum, killing a number of students. Khomeini vigorously protested, giving a strident speech that at once condemned the Shah's government and eased the

128. DEKMEIJAN, *supra* note 118, at 122.

129. Said Amir Arjomand, *Traditionalism in Twentieth Century Iran*, in FROM NATIONALISM TO REVOLUTIONARY ISLAM 212 (Said Amir Arjomand ed., 1984) (citing ENAYAT, *supra* note 95, at 190-94).

130. DEKMEIJAN, *supra* note 118, at 122.

131. *Id.*

132. See MALLAT, *supra* note 124, at 16-19.

133. Hamid Algar, *Introduction to RUH ALLAH KHOMEINI & HAMID ALGAR, ISLAM AND REVOLUTION: WRITING OF IMAN KHOMEINI* 15 (Hamid Algar trans., Mizan Press 1981).

134. A *madrasa* is a school or other place of educational instruction. See WEHR, *supra* note 61, at 321.

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grief of the families.<sup>135</sup> Four months later, on *Ashura*, Khomeini gave a historic speech in Qum, again calling attention to the martyrs who died at the *madrassa*, denouncing the Shah's regime, and invoking the example of Imam Husayn. He defiantly equated the policies of the Shah's government with the tyranny and oppression of Husayn's tormentor — Yazid.<sup>136</sup>

Two days after giving this speech, the Shah's government arrested Khomeini. There was a major uprising in several Iranian cities and the Shah's army killed hundreds of people in the space of a few days.<sup>137</sup> Khomeini remained in custody for some time, ultimately negotiating an agreement with the government that allowed him to go into exile. After a brief stay in Turkey, Khomeini traveled to Najaf, where he took up residence among the Shi'ite *ulama* of Iraq, including Muhammad Baqir al-Sadr and Muhammad Husayn Fadlallah.

After some time, and after continued Shi'a protests in Iraq, Khomeini's presence in Iraq began to alarm the new government of the Iraqi dictator Saddam Hussein. It is probable that Khomeini's presence and ideas also had a great influence on the other Najaf clerics. Khomeini steadily produced cassettes and political tracts for dissemination in Iran. In 1978, the Ba'athist government of Saddam Hussein expelled Khomeini from its midst and, after no other government in an Islamic community would take him, he traveled to France.

It was in France that Khomeini's ideas about *jihād* and *shahāda* began to bear fruit:

Khomeini's ability to reach the Iranian masses was also facilitated by his expulsion from Iraq in September 1978. In his new headquarters outside Paris, few restraints were placed on his political activities, while the international press gained unprecedented access to him. In the cassettes distributed from Iraq and Paris, Khomeini was careful *not* to advocate clerical rule for fear of alienating potential allies among liberals and leftists. What he did do was inspire the youth to take to the streets. In retrospect, it is clear that Khomeini hoped the anticipated killings of protestors by the Shah's troops would persuade Iranians that they themselves were enduring the mar-

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135. KHOMEINI & ALGAR, *supra* note 133, at 174-76.

136. *Id.* at 177-80.

137. VANESSA MARTIN, CREATING AN ISLAMIC STATE: KHOMEINI AND THE MAKING OF A NEW IRAN 63 (2000).

tyrdom of Imam Husayn and his supporters at the hands of Yazid. In such an atmosphere of mass suffering, a leader perceived as absolutely good and imbued with a clear determination to resist evil — a this-worldly *imam* — would then reappear to lead the people from darkness into light.<sup>138</sup>

Ultimately, as we know, Khomeini's ideas prevailed and his vision of the Shi'i government-by-jurist swept the Qum and Najaf clerics into power in Iran in 1979. Muhammad Baqir al-Sadr played a major role in these events:

The paramount role of Baqir al-Sadr as the chief ideologue and inspirational leader of Iraq's Shi'ites is beyond question. His lucid writings, combined with his reputed courage and uprightness, made him the vital fountainhead of Iraqi Shi'ite activism. Equally important was Baqir al-Sadr's relatively unknown role as one of the intellectual godfathers of Iran's Islamic Constitution. Indeed, the evidence indicates that this Arab ayatullah [sic] contributed notably to the ideological framework of the Islamic order in Iran. Reportedly, Baqir al-Sadr and Khomeini were in frequent contact both before and after the revolution in Iran. Soon after Khomeini's victorious return to Tehran on February 1, 1979, Baqir al-Sadr sent his colleague six studies entitled "Islam Guides Life," which contained an explication of Islamic theory on the structure of the *ummah*, the leading role of the religious authorities (*marji'yah*), the distribution of executive and legislative powers, and an outline of Islamic economic theory.<sup>139</sup>

Many of the Iranian clerics who were with Khomeini in Najaf returned to Iran and took positions in the new Islamic government in Tehran. One of the most important of these clerics was Ayatollah Taleqani, a scholar who has written on the concept of martyrdom. When the Iranian government began to export its vision of Islam, Ayatollah Taleqani's views on martyrdom gained influence. They reflect the radical reinterpretation of the Shi'a theology, permitting self-annihilation, which took form at Najaf. Consider his description of Islamic martyrdom, given in a speech in Tehran in June, 1963:

In short, anyone who has understood this truth and divine

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138. Daniel Brumberg, *Khomeini's Legacy: Islamic Rule and Islamic Social Justice, in SPOKESMEN FOR THE DESPISED: FUNDAMENTALIST LEADERS OF THE MIDDLE EAST* 37-38 (R. Scott Appleby ed., 1997) (emphasis in original).

139. DEKMEJIAN, *supra* note 118, at 123-24.

goal and has stood for it, sacrificing his life, is called *shahid* in the terminology of the Qur'an and jurisprudence. The *shahid* is the one who has experienced the *shuhud* [vision] of truth. The sacrifice of his own life is not based on illusion or agitation of his emotions. He has seen the truth and the goal. That is why he has chosen to wallow in the blood and the dust. Such a person does so with the intention of intimacy with God, not on the basis of fantasies and personal desires. He is above these worldly matters. He has understood the value of truth in a deserved way. This is why he annihilates himself, like a drop in the ocean of truth. This is the true meaning of the esoteric term *fana fi Allah* (self-annihilation in God). *Fana* is not what the Sufi does in the *khanqah*, shouting 'Hu! Hu!' and then imagining that he has reached God. The real meaning of *fana* is exhibited in the following poem:

From head to toe, God's light you'll  
radiate,

If in His cause, you self-annihilate!

If a person has reached the stage of readiness for self-annihilation through the vision of truth, for the sake of establishing truth, his title is *shahid*. Thus one cannot call everyone *shahid*. If someone mistakenly or for a worldly and illusive cause gets killed, he has lost both worlds, this and the hereafter. A *shahid* is the one who understands religion, knows his God, and believes in the hereafter as well as in eternal life. He must realize the goal. Then because he has seen the truth, he has no fear of death. Death is easy for him.<sup>140</sup>

Taleqani became a pivotal figure in the new Islamic government in Tehran and was elected to the Assembly of Experts in the first days of the new Islamic government.<sup>141</sup>

### C. *The Impact of the Ideas of Dr. Ali Shari'ati*

During this period the new ideology on martyrdom also received an important boost from another powerful figure, Dr. Ali Shari'ati. Shari'ati was an Iranian schoolteacher and the son and grandson of Iranian religious scholars of national fame.<sup>142</sup> He did not directly participate in the Najaf discourse but Khomeini later acknowledged that he was greatly influential. Although he was a non-cleric and described himself as a "God-wor-

140. Taleqani, *supra* note 125, at 67-68.

141. Legenhausen & Abedi, *supra* note 57, at 32.

142. *Id.*

shipping socialist," Shari'ati authored a number of powerful religious tracts, including a small but influential pamphlet entitled *MARTYRDOM: ARISE AND BEAR WITNESS*.<sup>143</sup> The text of the pamphlet is based on a speech he gave in Iran, during the height of the resistance to the Shah. In it, Shari'ati discusses Imam Husayn's martyrdom:

In Mecca, [Imam Husayn] announces to the pilgrims who had come for the annual pilgrimage, "I am going to my death." A person who is planning a political rebellion does not speak in these terms. He would say, "I am going to fight to kill. I will conquer. I will destroy the enemy."

But Imam [Husayn] addresses the people, saying, "Death, for the sons of Adam, is as beautiful as a necklace around the neck of a young and beautiful girl. Death is an ornament for mankind." Then he leaves Mecca to go towards death.<sup>144</sup>

He later succinctly describes the paradigm of Husayn's martyrdom in anthropological, theological, and juridical terms:

But in our culture, martyrdom is not a death which is imposed by an enemy upon our warriors. It is a death which is desired by our warrior, selected with all of the awareness, logic, reasoning, intelligence, understanding, consciousness, and alertness that a human being has.

Look at [Husayn] . . . . He is an unarmed, powerless, and lonely man. But he is still responsible for the *jihad*. He has no other means except to die, having himself selected a 'red death.' Being [Husayn] makes him responsible to perform *jihad* against all that is corrupt and cruel. He has no other means at his disposal for his *jihad* but his own death. He takes it and leaves his home only to enter the place of execution.<sup>145</sup>

In another speech, delivered in the Grand Mosque in Tehran the day after *Ashura*, 1970, Dr. Shari'ati explained why Husayn's martyrdom was conceptually different from other Islamic martyrdoms:

At any rate, in the history of Islam, for the first time, Hamzah [the Prophet's uncle killed in battle at Uhud] was given the title *Sayyid al-Shuhada* [the Master of Shuhada]. The same ti-

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143. ALI SHARIATI, *MARTYRDOM: ARISE AND BEAR WITNESS* (Ali Asghar Ghassemy trans., The Ministry of Islamic Guidance Tehran 1981).

144. *Id.* at 48.

145. *Id.* at 83.

tle was later primarily applied to Husayn. Both are *Sayyid al-Shuhada* but there is a fundamental difference between their *shahadat*. They are of two kinds which can hardly be compared. Hamzah is a *mujahid* [*jihad* warrior] who is killed in the midst of *jihad*, but Husayn is a *shahid* who attains *shahadat* before he is killed. . . . A *shahid* is a person who, from the beginning of his decision, chooses his own *shahadat*, even though months or even years may pass. If we want to explain the fundamental difference between the two kinds of *shahadat*, we must say that, in Hamzah's case, it is the death which chooses him. In other words, it is a kind of *shahadat* that chooses the *shahid*. In Husayn's case, it is quite the contrary. The *shahid* chooses his own *shahadat*. Husayn has chosen *shahadat*, but Hamzah has been chosen by *shahadat*.<sup>146</sup>

In gripping language, Dr. Shari'ati describes the purpose of *shahadat*:

*Shahadat* has a unique radiance; it creates light and heat in the world and in the cold and dark hearts. In the paralyzed wills and thought, immersed in stagnation and darkness, and in the memories which have forgotten all the truths and reminiscences, it creates movement, vision, and hope and provides will, mission, and commitment. The thought, "[n]othing can be done," changes into, "[s]omething can be done," or even, "[s]omething must be done." . . . By his death, he condemns the oppressor and provides commitment for the oppressed.<sup>147</sup>

#### D. *The Ba'ath Regime Reacts, Bringing about the Martyrdom of Muhammad Baqir al-Sadr*

The sudden success of the Iranian Islamic Revolution in 1979 had a tremendous effect on the clerics who had remained in Najaf, including Muhammad Baqir al-Sadr. Indeed, Sheikh Fadlallah later described the revolution as an "earthquake."<sup>148</sup> The revolution was the fruit of a long and bitter struggle, both in Iran and in Najaf. Beginning in the early 1960s, al-Sadr had become a member of the most distinguished and influential *hawza*

146. Shari'ati, *supra* note 125, at 239-40.

147. *Id.* at 240-41. Ali Shari'ati was found dead in an apartment in London on June 9, 1977. See Legenhauser & Abedi, *supra* note 57, at 35.

148. Martin Kramer, *The Oracle of Hizbullah: Sayyid Muhammad Husayn Fadlallah, in* SPOKESMEN FOR THE DESPISED: FUNDAMENTALIST LEADERS OF THE MIDDLE EAST 101 (R. Scott Appleby ed., 1997).

in Najaf and had published several other books, on economics, law, and politics, all widely received. He, his sister Amina al-Sadr, known as Bint-al Huda [daughter of Huda], and Fadlallah also published a journal, *al-Adwa'* that received wide attention in Iraq and Iran.<sup>149</sup> The journal put forward a militant Shiism, one that eschewed clerical quietism and championed emulation of the martyrdom of Husayn as a method of combating tyranny and oppression.<sup>150</sup> Consistent with Khomeini's later reinterpretation of the message of the martyrdom of Husayn, the Najaf clerics argued that his martyrdom had great socio-political significance for the oppressed in modern Islamic societies.<sup>151</sup>

Eventually, members of al-Sadr's *hawza* convinced him to give up his positions in the *Da'wah* party and on the journal and to devote himself to becoming the *Marj' al Taqlid* or chief *mujtahid* in Iraq.<sup>152</sup> Al-Sadr did not, however, completely sever his political ties. He kept in touch with the party activities and deputized Sheikh Fadlallah to continue writing strident editorials in the journal.<sup>153</sup> Over the next several years, al-Sadr sought to strengthen the curriculum and organization structures of the Najaf colleges, in preparation for assuming the position as chief *mujtahid*.<sup>154</sup>

Beginning in 1970, the Ba'ath regime began efforts to try to ban the annual ceremonies commemorating the martyrdom of Imam Husayn and, by 1977 it eventually succeeded, thus provoking the ire of the Shi'a masses and their clerics.<sup>155</sup> There were violent protests over the attempted ban and al-Sadr gradually

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149. MALLAT, *supra* note 124, at 16.

150. *Id.* at 17.

151. *Id.*

152. Aziz, *supra* note 127, at 210. The *marj' al Taqlid* ["reference point of emulation" or, in some translations, "reference point of imitation"] is the highest religious and legal authority in a Twelver Shi'ite community. He is often described as the chief *mujtahid* and is responsible for making legal judgments and issuing opinions in the most important jurisprudential questions of the day. The office evolved as the number of *mujtahids* began to increase in the nineteenth century in Iraq and Iran and there was a need for coordination and centralization of the legal functions of the *mujtahids*. See MOMEN, *supra* note 14, at 204-05, 204 n.25; see also SAID AMIR ARJOMAND, THE SHADOW OF GOD AND THE HIDDEN IMAM 137-44 (1984) (describing the history of the *mujtahids*' political centralization).

153. Aziz, *supra* note 127, at 210.

154. *Id.* at 211.

155. *Id.* at 213-14.

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found himself drawn back into politics.<sup>156</sup> During this time he was actively collaborating with and advising Imam Khomeini until 1978, when the Iraqi government expelled Khomeini.

Shortly thereafter, al-Sadr took the bold step of issuing a *fatwa* prohibiting Muslims from joining the Ba'ath party, a step reminiscent of the actions of Imam Husayn. This greatly alarmed many of al-Sadr's followers.<sup>157</sup> By then he was acknowledged as the *Marj' al Taqlid* for Iraq and he had to take care to protect the Shi'i religious institutions from the crushing oppression of the Ba'ath regime. The government began an active campaign to discredit him and influence others to remove him from his powerful clerical position.<sup>158</sup> Khomeini, by now the supreme leader in Iran, broadcast a message into Iraq urging al-Sadr to remain in his position.<sup>159</sup> Al-Sadr responded to Khomeini's message with a message of firm defiance and courage, and the two communications set off another round of Shi'a demonstrations and protests all over Iraq.<sup>160</sup> These activities presented difficulties for the Saddam Hussein regime, which was secular, run by Sunnis and Christians, and dismissive of the plight of the Iraqi Shi'a. Al-Sadr had been arrested several times before by the Ba'ath regime, only to be released.<sup>161</sup> It was clear that this time, however, he was facing certain imprisonment and perhaps execution if he continued his activities.

In June of 1979, al-Sadr prepared to travel to Tehran to meet his old Najaf colleague, Imam Khomeini, the newly installed leader of revolutionary Iran.<sup>162</sup> Saddam Hussein's regime

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156. *Id.* at 215.

157. *Id.* at 215-16.

158. *Id.*

159. *Id.* at 216.

160. *Id.*

161. *Id.* at 213; MALLAT, *supra* note 124, at 18.

162. MALLAT, *supra* note 124, at 18. At some point in the process that led to the establishment of the new Islamic government in Iran, the Twelver Shi'a began to use the title "*Imam*" in referring to Khomeini. This is indeed an unusual occurrence in Shi'ite practice. Although the title "*Imam*" is an honorific that technically can be used to describe anyone who leads Muslims in prayer, in Shi'a practice the title is usually reserved for reference to one of the Twelve foundational *Imams* who are descended from Ali and Fatima — the last of whom is hidden and still in "occultation." The community seems to have made an exception for Khomeini. In using the title there is no suggestion that Khomeini occupies any special position in the Shi'ite pantheon of Imams.

blocked his travel and placed him under house arrest in Najaf.<sup>163</sup> They considered his support of the new Khomeini regime as a direct threat to their regime. His sister protested, giving a fiery speech in Najaf at the shrine of Ali and urging support for him. Al-Sadr remained under house arrest for eleven months.<sup>164</sup>

Representatives of the Saddam Hussein regime demanded that al-Sadr make a public statement denouncing the Iranian Revolution and giving his imprimatur to Iraqi policy toward Iran.<sup>165</sup> He refused and the government then sent a mediator who proposed five conditions to spare his life.<sup>166</sup> These conditions, although said to be more palatable, were not substantively different from the first demand.<sup>167</sup> Al-Sadr again refused, deciding, according to T.M. Aziz, "to reject all government demands in anticipation of his martyrdom."<sup>168</sup>

His arrest provoked widespread protests and ultimately thousands of Shi'a were arrested and hundreds executed without trial.<sup>169</sup> On April 1, 1980, there was an attempt on the life of Tariq Aziz, a leading figure in the Hussein government, while he was giving a speech at a Baghdad university. Several of his bodyguards were killed. The attempt was blamed on the Najaf *ulama* and the government retaliated.<sup>170</sup> Several students were killed. At their funeral several days later, a grenade was thrown into the crowd, injuring more students.<sup>171</sup>

On March 31, 1980, the Revolutionary Command Council of the Saddam Hussein government passed a law sentencing all *Da'wah* party members and their supporters to death.<sup>172</sup> Bint-al-Huda was then arrested, and she and her brother were transferred to a Baghdad prison where they were executed in secret by the Hussein regime, probably on April 8, 1980.<sup>173</sup> In tape-

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163. *Id.*

164. Aziz, *supra* note 127, at 216.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 217.

169. *Id.* at 207.

170. T.M. Aziz suggests that the *Da'wah* activists had actually determined to take up arms against the Ba'ath government and this was the cause of the attempted assassination of Aziz. *Id.* at 217.

171. *Id.*

172. *Id.*

173. Muhammad Baqir al-Sadr's body was returned to relatives and buried shortly thereafter but Bint al-Huda's body was never returned to the family. One can only

recorded messages smuggled out of his house before his execution, but not released until afterward, al-Sadr urged the Iraqi people to resist the Ba'ath regime by any means possible.<sup>174</sup> He spoke of the possibility of an Islamic government for Iraq, and demanded the Ba'ath government to ensure "political and religious rights for all people, Shi'i and Sunnis, Arab and Kurds."<sup>175</sup>

The deaths of Muhammad Baqir al-Sadr and his sister, although not battlefield deaths, were treated by all Shi'a as martyrs' deaths. They galvanized the Shi'a *ulama* in Iraq and Iran and hundreds more Iraqi Shi'is were executed without trial while thousands were deported to Iran, even though they were of Arab descent and had no ties to Iran.<sup>176</sup> Within five months, Iraqi soldiers invaded Iran, beginning what would be a long and bloody war. The Iranian government mobilized and motivated its young soldiers for service in that war through frequent and steady exhortations to Islamic martyrdom.<sup>177</sup>

E. *A New Paradigm of Martyrdom is Crystallized in the Iran-Iraq War*

In a recently published examination of the origins of the "suicide-bombing" phenomenon, the German journalist Christoph Reuter describes the war-time actions of the Iranian child-soldiers, as recounted by Muhammad Sallam, a Lebanese journalist who personally witnessed them.

One scene still haunts him . . . It happened at the Iraqi-Iranian front at the beginning of the year 1984, near the town of Al-Usair, not far from that bridge over the Tigris, which would stop U.S. General Norman Schwarzkopf's advance seven years later in the Gulf War. After weeks of silence the Iranian attack had begun and Muhammad Sallam, one of the few foreign journalists directly at the front, was watching an

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presume that she was also executed. *Id.* at 218 n.66 (citing statements of family members). See also MALLAT, *supra* note 124, at 18.

174. Aziz, *supra* note 127, at 217.

175. *Id.*

176. MOMEN, *supra* note 14, at 263.

177. See generally SASKIA GIELING, *RELIGION AND WAR IN REVOLUTIONARY IRAN* (1999); STEPHEN C. PELLETIERE, *THE IRAN-IRAQ WAR: CHAOS IN A VACUUM* (1992); SHAHRAM CHUBIN & CHARLES TRIPP, *IRAN AND IRAQ AT WAR* 41-52 (Westview Press 1991) (1988) (describing tactics and mobilizing strategies used by Iranian government and military authorities in the war, including human wave attacks and other self-annihilatory tactics).

Iraqi gunner: how he was sitting behind his heavy machine gun, his body so rigid that he could endure endless hours in this position. He was holding his hand on the trigger. And then they came. No, first they could be heard, a constant buzzing as if thousands of locusts were approaching. The tone got deeper and deeper, formed from thousands of mouths screaming “*Ya Karbala, Ya Hussein, Ya Khomeini!*”, coming closer. Like a wave of people, they came from tunnels and caves, from behind walls and mountains, thousands and thousands coming closer. And almost all were children or teenagers . . . And the man with the machine gun fired. He fired, and he did not stop, and ‘he killed these children like you would fire on empty bottles. And they kept on running, climbing, jumping, and falling over the dead.’<sup>178</sup>

Reuter, quoting Muhammad Sallam, tells how, after the assault, called “Karbala” by the Iranian military, “there were only dead, as far as you could see,”<sup>179</sup> describing more than 23,000 dead, all killed in one day, all children around twelve or thirteen years old, and all found with keys around their necks. In Sallam’s words “[t]hey were told they could use the key to open the doors to paradise once dying as martyrs.”<sup>180</sup> As the chant and actions of the young Iranians so graphically illustrate, it was the paradigm of Husayn’s martyrdom and the discourse that flowed from that paradigm in Najaf that ultimately became the genesis of the behavior of the young Iranian soldiers described by Sallam. This behavior then became the basis for a new self-annihilatory norm in modern *jihadist* wars.

#### F. *The Najaf Renaissance and the Sunni Revival Compared*

Many scholars have described the events that occurred in Najaf as an Islamic Renaissance [*nahdah*] paralleling a similar phenomenon occurring in the Sunni world during roughly the same time period and best exemplified by the rise of militancy in Egypt and the martyrdom of Sayyid Qutb. Sayyid Qutb became an important intellectual figure in the Sunni revival through the publication of his books advocating a reinterpretation of the Islamic vision of the world and because of his leadership in the

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178. REUTER, *supra* note 25, at 59. I am grateful to Sonia Wentzel, Esq., for help with this translation.

179. *Id.* at 60-61.

180. *Id.*

Muslim Brotherhood organization founded by Hasan al Banna. Perhaps his greatest intellectual achievement is the completion, while in prison, of his modern commentary on the Qur'an.<sup>181</sup> His writings extolled the concept of the aggressive *jihad*. Although he was executed by the Nasser government in 1966, his theories were widely influential among Sunni Islamists, especially the Egyptian *jihadist* organizations that eventually assassinated Anwar Sadat and declared open rebellion against the Egyptian government.

The best evidence of the influence of Qutb is a pamphlet, entitled THE NEGLECTED DUTY [*Al Faridah al Gha'iba*], authored by Muhammad Abd al-Salam Faraj, one of the co-conspirators in the Sadat assassination.<sup>182</sup> This document is probably the most important document produced by the Sunni revival. Ayman Zawahiri, of Al Qaeda, mirrors its arguments in his later statements in support of the Egyptian *jihadist* movement.<sup>183</sup> The document is a manifesto advocating aggressive *jihad* against the Egyptian government, comparing it to the regime of the Mongols who invaded Baghdad in the thirteenth century, imposing a syncretistic, totalitarian rule on the citizens of Iraq. It quotes Sayyid Qutb's vehement condemnation of those Muslims who refuse to wage *jihad* in such circumstances.<sup>184</sup> The author of THE NEGLECTED DUTY argues that *jihad* is, in effect, a sixth pillar of Islam,<sup>185</sup> and all Muslims have an obligation to exercise

181. The commentary has recently been translated into English. See QUTB, *supra* note 77.

182. See JOHANNES J.G. JANSEN, THE NEGLECTED DUTY: THE CREED OF SADAT'S ASSASSINS AND ISLAMIC RESURGENCE IN THE MIDDLE EAST (1986); see also Sonia L. Alianak, *Religion, Politics and Assassination in the Middle East*, WORLD AFFAIRS, Winter 1998, at [http://www.findarticles.com/cf\\_dls/m2393/n3\\_v160/20380795/p1/article.jhtml?term=messianic](http://www.findarticles.com/cf_dls/m2393/n3_v160/20380795/p1/article.jhtml?term=messianic) (discussing the pamphlet's influence).

183. See Ayman al Zawahiri, *On the Islamist Revolution in Egypt*, in ANTI-AMERICAN TERRORISM IN THE MIDDLE EAST 69-72 (Barry Rubin & Judith Culp Rubin eds., 2002).

184. JANSEN, *supra* note 182, at 226 (quoting Qutb's *Fi Zilal al Qur'an*).

185. "Islam is built on five pillars. The first of which is a state of faith and the other four are major exercises of faith." The first pillar is witnessing that Allah is one and Muhammed is his messenger [*Shahada*].

The second pillar is Prayer [*Salah*]. "Offering prayers is obligatory upon every Muslim who is sane, mature and in the case of women free from menstruation . . ." The obligatory prayers include five daily prayers, and the noon congregation prayer on Friday.

The third pillar is Charity [*Zakah*]:

"Obligatory charity is an act of worship and spiritual investment. The literal meaning of *Zakah* is purity and it refers to the annual amount in kind or coin

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the duty when infidels and apostates govern them. If they do not exercise this duty, they can be killed just as the infidels can be killed. Pious Muslims must not tolerate their presence.<sup>186</sup>

Interestingly, there are a number of sections of the pamphlet extolling martyrdom and, citing *hadith*, the duty of Muslims to fight the infidels to the death.<sup>187</sup> These sections emphasize the purity of intention that the martyr must possess in order to enter paradise.<sup>188</sup> The *hadiths* cited are accounts of Muslims in the Prophet's time who refused to surrender and were then killed by their enemy. There is absolutely no mention of the martyrdom of Imam Husayn, nor is there any suggestion that Muslims should intentionally annihilate themselves in conducting the *jihād*.

After the assassination of Sadat, the Egyptian government initially banned publication of *THE NEGLECTED DUTY*. Then, inexplicably, the Sheikh of Al Azhar, Jadd al Haqq Ali Jadd al Haqq, the most widely respected clerical figure in Sunni Islam, published an official point-by-point refutation of Faraj's arguments. The refutation was widely disseminated, having the perhaps unintended effect of leading to the publication and widespread discussion of the manifesto itself. On December 14, 1981, the Cairo newspaper *Al Ahrar* published the complete text, calling it "the constitution of terrorism."<sup>189</sup> Within three years,

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which a Muslim with means must distribute among the rightful beneficiaries. *Zakah* not only purifies the property of the contributor but also purifies his heart from selfishness and greed. The recipients of *Zakah* are the poor, the needy, the new Muslim converts, the Muslim prisoners of war (to liberate them), Muslims in debt, employees appointed to collect *Zakah*, Muslims in service of research or study or propagation of Islam, and wayfarers who are foreigners in need of help."

The fourth pillar is Fasting [*Sawm*]. "Fasting is abstaining completely from eating, drinking, intimate sexual contacts and smoking from the break of dawn till sunset." Exceptions to fasting include children under puberty, women during their period of menstruation and while nursing their child, and also in cases of travel and sickness for both men and women.

The fifth pillar is the Pilgrimage [*Hajj*]. It is a pilgrimage to Mecca, at least once in a lifetime and it is obligatory upon every Muslim male and female who is mentally, physically and financially fit. Muslims from all walks of life, from every corner of the globe assemble in Mecca in response to the call of Allah. *Introduction to the Articles and Pillars of Islam*, available at <http://www.usc.edu/dept/MSA/fundamentals/pillars/intro/pillars.html>.

186. JANSEN, *supra* note 182, at 227-28.

187. *Id.* at 220.

188. *Id.* at 222-25.

189. *Id.* at 2.

two more versions were published, including a version compiled by the Egyptian Ministry of Endowments from transcripts and evidence introduced in the trial of the Sadat assassination conspirators. Even though the tract rails against the “apostacy” of the Egyptian government, the ministry’s version is acknowledged as the best reprint and the one most faithful to Faraj’s original text.<sup>190</sup> A number of scholarly commentaries soon followed. The most authoritative is probably the short evaluation and commentary by the eminent Egyptian theologian and jurist Dr. Muhammad Imarah.<sup>191</sup> In it, he debunks the analogy to the Mongol invasion of the thirteenth century and he uses textual references from the writing of Ibn Taymiyya to show that the *jihadist* reliance on these sources as support for their position concerning the “apostacy” of the Egyptian government is woefully misplaced and plainly inaccurate.<sup>192</sup>

The publication of *THE NEGLECTED DUTY* generated intense discussion throughout the Sunni world and it played an important role in the development of the ideas that led to the Sunni *jihadist* revival. Faraj’s pamphlet, Sayyid Qutb’s writings, especially his little book called *MILESTONES*, and the writing of Syed Maududi in Pakistan sought to radically reformulate the Sunni view of the military *jihad*, seeking to make it a pillar of Islam like prayer and fasting. In this respect, the Sunni revivalists and the Shi’a jurists in Najaf shared a similar agenda.

Yet, while there were great similarities in the Shi’a and Sunni revivals, there were also a number of important differences that clearly distinguish the two sets of events. These distinctions are highly significant and explain much in terms of the new attitude toward martyrdom that exists in the Islamic world today.

The first distinction is that the Shi’a renaissance was primarily led by *ulama*; not just ordinary clerics or other unsophisticated *ulama* but classically trained *ulama* who came out of the best traditions of Shi’a legal and theological education. The leaders of the Sunni renaissance have tended to be non-clerics, people possessed of only a secular university education or sometimes no

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190. *Id.* at 3.

191. AL FARIDAH AL GHAIBAH: ‘ARD WA HIWAR WA TAQYIM [THE NEGLECTED DUTY: AN EXPOSITION, DIALOGUE, AND EVALUATION] (1982).

192. *Id.* at 45.

advanced education at all. In fact, the leaders of the *ulama* in the Sunni world often chose to align themselves with the “infidel” governments. The Sunni revival therefore frequently suffered from a lack of coherent leadership and, when there was competent leadership, it was rarely conducted by Sunni *ulama*, and certainly not *ulama* from premier Sunni educational institutions. Concomitantly, the Shi’a *ulama* remained largely independent of the governments they dealt with. They generally were not financially dependent on the government since they collect the *zakat* religious taxes directly from the believers and pay their own salaries and expenses out of those sums. Sunni *ulama*, on the other hand, receive their salaries and, often, their clerical appointments, from the government. This greatly hampers their ability to take positions in opposition to the government. Consequently, the Sunni *ulama* were not, as a class, significantly involved in the Sunni revivalist renaissance.

Secondly, the Shi’a renaissance developed a highly successful result that it could point to. This result was the initial success of the Iranian Islamic Revolution.<sup>193</sup> The Sunni Islamists did not have any comparable success that they could point to and recently many of their *jihadist* efforts have in fact met with spectacular failure.<sup>194</sup> Many observers have suggested that the Iranian Islamic Revolution would have a profound impact on the Islamic world and the Islamic view of history. My argument here is that this anvil has already been struck.

Consider these words by Imam Khomeini, delivered in a speech at the Feyziyeh Theological School in Iran, shortly after his return from France:

We have sacrificed much blood and martyrs. Islam has sacrificed blood and martyrs.

We do not fear giving martyrs . . . . Whatever we give for

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193. Doubts are now being raised about the likelihood of continued success of the Iranian Islamic Revolution. See, e.g., Marcus Gee, *Iran is a Nation Divided against Itself*, THE GLOBE AND MAIL, Oct. 10, 2003, at A21; Angie Chuang, *Iran's New Revolution?*, PORTLAND OREGONIAN, Aug. 22, 2003, at A8. Whether Khomeini's vision of government-by-jurist will endure remains to be seen.

194. The failure of the Algerian Islamists to bring about a change of government in Algeria and the widely publicized executions and incarcerations of members of *Jami'at Islamiyya* and the Islamic Jihad organizations in Egypt are two recent examples. See Ben Barber, *Fighting an Unholy War; Nations Struggle to Control Growth of Muslim Militants*, WASH. TIMES, Aug. 18, 2002, at 1. It remains to be seen whether Al Qaeda's *jihadist* efforts will fare any better.

Islam is not enough and is too little. Our lives are not worthy. Let those who wish us ill not imagine that our youths are afraid of death or of martyrdom. Martyrdom is a legacy which we have received from our prophets. Those should fear death who consider the aftermath of death to be obliteration. We, who consider the aftermath of death a life more sublime than this one, what fear have we? The traitors should be afraid. The servants of God have no fear . . . . Our guards who were [killed] . . . have achieved eternal life.<sup>195</sup>

We see, then, that the elevation of the Shi'a theology of martyrdom to the level of *jihadist* ideology played an important role in solidifying the Najaf renaissance in the 1960s and 1970s and in providing a mobilizing tool in the Iranian Islamic Revolution. Although Saddam Hussein martyred Muhammad Baqir al-Sadr, al-Sadr's two colleagues, Imam Khomeini and Sheikh Muhammad Husayn Fadlallah, took the new ideology of martyrdom from Najaf to other parts of the Islamic world and were instrumental in transforming battlefield norms for Muslims. Having discussed the results of this transformation in Iraq and Iran, this Article will now turn to Sheikh Fadlallah's actions in Lebanon. As will be seen, his efforts and pronouncements are perhaps an even more important linchpin in the process that resulted in the transformation of the Islamic law of the military *jihad*.

## V. *HIZBU'LLAH, MUHAMMAD HUSAYN FADLALLAH, THE PALESTINIAN STRUGGLE, AND AL QAEDA*

### A. *Fadlallah's Formative Years*

Muhammad Husayn Fadlallah, eventually to become the "spiritual guide" of Hizbu'llah, was a young contemporary of Muhammad Baqir al-Sadr, although he had left Iraq and returned to his family's ancestral home in Lebanon long before the martyrdoms of al-Sadr and his sister Bint-al-Huda. Fadlallah was born in 1936, in Najaf. His family was poor but with an important Shi'a background. His father and uncle were both clerics, and his father had emigrated to Najaf from Lebanon just before he was born. The family was said to be descendants of

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195. Ayatollah Ruhollah Khomeini, *Speech at Feyziyeh Theological School*, in *ANTI-AMERICAN TERRORISM AND THE MIDDLE EAST* 33 (Barry Rubin & Judith Culp Rubin eds., U.S. Dept. of Commerce, Foreign Broadcast Information Service trans., 2002).

Imam Ali Ibn Abi Talib, son-in-law of the Prophet and the first Shi'a *Imam*. They were thus privileged to use the Islamic title "Seyyid" in their names.

Fadlallah was greatly affected by his family's poor circumstances and this influenced his ideas about social justice later in life.<sup>196</sup> He received a traditional Islamic education in Najaf and excelled at his studies, joining the *hawza* of prominent theologians and jurists at the age of eleven and remaining with the *hawza* for twenty-two years. Muhammad Baqir al-Sadr was also a member of this *hawza* and his ideas greatly influenced the young Fadlallah. Fadlallah returned to his ancestral home in Lebanon in 1966, shortly after Imam Khomeini settled in Najaf. Thus, he escaped the upheaval that convulsed Iraq and Iran but he followed the events with great interest and, by his own admission, kept in touch with al-Sadr and his other teachers in Najaf. In those early years he immersed himself in political activities in Lebanon and he assisted the Lebanese Imam Musa al Sadr in establishing the Higher Islamic Supreme Shi'ite Council in Lebanon before Imam Musa disappeared while on a trip to Libya.

#### B. Fadlallah Advances the New Jihadism

Fadlallah's legacy and the propagation of his juristic ideology in Lebanon, including the establishment of Hizbu'llah, are the direct result of the ideas of Imam Khomeini and Muhammad Baqir al-Sadr.<sup>197</sup> He has called for a new *jihad* from the Shi'a of Lebanon, a *jihad* that would be modeled on the Iranian Islamic Revolution and would use self-sacrificing martyrdom as one of its central tenets. Fadlallah takes the ideas of *jihad* and Shiism a step further, positing that the mission of the Shi'a internationalist movement is to transform the Islamic world and indeed the entire Western world. Fadlallah's message is therefore at once pan-Islamic and ecumenical. Whereas Muhammad Baqir al-

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196. The biographical details are from AHMAD S. MOUSSALLI, HISTORICAL DICTIONARY OF ISLAMIC FUNDAMENTALIST MOVEMENTS IN THE ARAB WORLD, IRAN, AND TURKEY 60 (1999).

197. See SAAD-GHORAYEB, *supra* note 16, at 6-13; ABU-RABI', *supra* note 122, at 220-47. Saad-Ghorayeb does not agree that Fadlallah was instrumental in the establishment of *Hizbu'llah*. Siding with the arguments of Chibli Mallat and Hala Jaber, he suggests that he is "a strong source of inspiration" rather than a spiritual mentor for the party. SAAD-GHORAYEB, *supra* note 16, at 6 n.10 (citing HALA JABER, HEZBOLLAH: BORN WITH A VENGEANCE 67 (1997)). This is because Fadlallah's strong popular following requires that he maintain a healthy independence from any political party. *Id.* at 13.

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Sadr's message was directed at the oppressed Shi'a masses in Iraq, Fadlallah addresses his messages to all Muslims, indeed, all oppressed people who suffer under the yoke of tyranny and discrimination. Like Ali Shari'ati, and to some extent like Imam Khomeini, Fadlallah incorporates the anti-imperialist nationalist arguments of Frantz Fanon and Che Guevara into his political rhetoric.<sup>198</sup>

Another aspect of Fadlallah's approach that distinguishes him from al-Sadr and builds on the ideas of Imam Khomeini is his attitude toward Israel and the struggle of the Palestinians. Unlike other Lebanese Shi'a clerics, Fadlallah always saw the Palestinian struggle as the central problem of the Islamic community, a problem that was, in many ways, more important than the struggle of the oppressed Shi'a in Lebanon and Iraq. In the early 1980s, he pointed out that almost half of the occupants of the refugee camps in Beirut were displaced Shi'a and that their plight was identical to the Palestinian plight. His identification with Palestinian suffering was perhaps attributable to his own poor background but it struck a chord among both Palestinians and the Lebanese Shi'a, thus allowing him to galvanize both communities, oftentimes through vocal support for activities of Hizbu'llah.

### C. *The New Jihadism Manifested*

On April 18, 1983, sixty-three people, including the CIA's Middle East director, were killed and 120 injured in a self-annihilatory truck bombing of the U.S. Embassy in Beirut. Islamic Jihad, an organization said to be a precursor or alter-ego of Hizbu'llah, claimed responsibility. Six months later, on an October morning in 1983, two Shi'ite youth driving trucks loaded with explosives crashed into barracks housing French and American marines. More than three-hundred American and French military men and women died, and the event ultimately convinced the American and French governments to withdraw their forces from Lebanon. Islamic Jihad again claimed responsibility. A few days later, stories began to appear in the world press assert-

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198. Kramer, *supra* note 148, at 93. See, e.g., FRANTZ FANON, *THE WRETCHED OF THE EARTH* 35-106, 213-14 (Constance Farrington trans., 1963) (discussing the role of revolutionary violence in an anti-colonial struggle and the role of Islam in the Arab anti-colonial struggle and the effort to preserve Arab culture).

ing that Fadlallah had “blessed” the “self-martyrs” prior to the operation.<sup>199</sup>

Although Fadlallah denied involvement, over time he began to issue statements supporting such actions in terms of Islamic law. In the autumn of 1985, Fadlallah gave an interview to the French magazine POLITIQUE INTERNATIONALE. He maintained that, if the “self-martyr” was “to have a political impact on an enemy whom it is impossible to fight by conventional means, then his sacrifice can be part of a *jihad*. Such an undertaking differs little from that of a soldier who fights and knows that in the end he will be killed. The two situations lead to death; except that one fits in with the conventional procedures of war and the other does not.”<sup>200</sup> Fadlallah had taken the paradigm of the battlefield martyrdom of Imam Husayn and transformed it to justify self-annihilatory violence in the *jihad* aimed at the soldiers of the French and American occupying armies in Lebanon.<sup>201</sup> This new methodology is in fact grounded in the arguments and logic first put forward by Imam Khomeini and the Shi’a *ulama* in Najaf.

#### D. *The Self-Annihilatory Methodology Spreads*

Soon after the Beirut bombings, there were also sporadic self-annihilatory bombings in the Persian Gulf. These events can also be directly traced to the propagation of Shi’i religious ideology emanating from Iraqi Shi’i *ulama* and their Iranian supporters. Martin Kramer has described it as the “Najaf Connection.”<sup>202</sup> On December 12, 1983, Iraqi Shi’i, identified as members of *al-Dawa*, according to Kramer, carried out a series of bombings in Kuwait, including the self-annihilatory truck bombing of the U.S. Embassy.<sup>203</sup> Five people were killed and eighty-seven were injured. In Beirut, the Islamic Jihad organization,

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199. See Kramer, *supra* note 148, at 109.

200. *Id.* at 111 n.66 (quoting and translating interview with Fadlallah appearing in POLITIQUE INTERNATIONALE). I have independently verified that Kramer’s translation of the Fadlallah interview, conducted in French, is accurate. See *L’Islam Imperial: Entretien avec le Sheik Mohamed Hussein Fadlallah*, 29 POLITIQUE INTERNATIONALE 270, Autumn 1985, 270-85.

201. ABU-RABI’, *supra* note 122, at 236-37.

202. Martin Kramer, *Intra-Regional and Muslim Affairs: Muslim Statecraft and Subversion*, in 8 MIDDLE EAST CONTEMPORARY SURVEY 1983-84, at 158, 170 (Haim Shaked & Daniel Dishon eds., 1986).

203. *Id.*

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the same organization that claimed responsibility for the April 18 and October 23 truck bombings of French and U.S. military barracks, also took responsibility for the Kuwait attacks.<sup>204</sup> Another Iraqi Shi'i organization, *Munazzamat al 'Amal al Islami*, acting under the direction of a Karbala-born and Najaf-trained cleric, Muhammad Taqi al Mudarrasi, openly carried out self-annihilatory bombing operations in Baghdad.<sup>205</sup> Mudarrasi boasted, in the magazine *JEUNE AFRIQUE*, that "in one week I can gather 500 of the faithful who are prepared to launch suicide operations. No border can stop them."<sup>206</sup> Supposedly the organization had a Pan-Islamic platform and included men from Iraq, Iran, Bahrain, Afghanistan, and North Africa.

On May 25, 1985, there was an attempted assassination of the Emir of Kuwait by self-annihilatory car bomb. The perpetrators of this attack were said to be Iraqi Shi'ites, with assistance from Lebanese Shi'ites. There was concerted Shi'a effort to destabilize Kuwait and the assassination attempt had been preceded by a series of bombings.<sup>207</sup>

#### E. *Application to the Palestinian Struggle*

Because Fadlallah was so vocal in his support of the Palestinian struggle, it was only a matter of time before this new ideology of self-sacrifice, the same ideology that shapes the modern Shi'a view of Imam Husayn's martyrdom, would take hold among the Palestinian organizations. Hizbu'llah encouraged this development with active political and military support. Sayyid Hasan Nasrallah, the Hizbu'llah's Secretary General, opened the Solidarity Convention for the Support of the Intifada in Beirut on May 22, 2001 by saying, "[w]e share the same destiny with the Palestinian Intifada till the liberation of Jerusalem."<sup>208</sup> On October 2, 2001, Nasrallah reiterated that nothing had changed since September 11, saying "[o]ur culture is that of *jihad*, resistance,

204. Dore Gold, *Part Two: Country by Country Review: Kuwait*, in 8 MIDDLE EAST CONTEMPORARY SURVEY, *supra* note 202, at 405.

205. Kramer, *supra* note 202, at 171 n.97 (citing the organization's communique, *al-Shahid*).

206. *Id.* at 171 n.96 (quoting *JEUNE AFRIQUE*, Jan. 25, 1984).

207. Martin Kramer, *Intra-Regional and Muslim Affairs: The Routine of Muslim Solidarity*, in 9 MIDDLE EAST CONTEMPORARY SURVEY 1984-85, at 146, 154 (Itamar Rabinovich & Haim Shaked eds., 1987).

208. Joseph Alagha, *Hizbullah, Iran, and the Intifada*, in ISIM NEWSLETTER [INSTITUTE FOR THE STUDY OF ISLAM IN THE MODERN WORLD], Sept. 2002, at 35.

and martyrdom.”<sup>209</sup>

Fathi al Shiqaqi, one of the founders of the Palestinian Islamic Jihad wrote a book about Khomeini, entitled AL-KHOMEINI: AL-HALL AL-ISLAM W'AL-BADIL [KHOMEINI: THE ISLAMIC SOLUTION AND ALTERNATIVE] and asserted that he resorted to Shi'ite theology for injunctions that counseled rebellion against tyranny because he could not find such injunctions in Sunni theology.<sup>210</sup> The change was gradual, but steady and perceptible. More recently, in a January 7, 2003 interview given to the AL HAYAT newspaper, Ramadhan Shellah, a leader of Islamic Jihad in the Occupied Territories, was asked whether the organization borrowed the idea of “martyrdom operations” from Hizbu'llah. “Of course,” he answered, indicating that Hizbu'llah was the first to conduct such operations, with the attack on the U.S. Marine barracks in Beirut in 1983.<sup>211</sup>

There is no need to recount the plethora of self-annihilatory attacks, against both civilian and military targets, occurring in Israel and the West Bank and Gaza since that time. The historical record clearly establishes that the Palestinian Islamists now view the *jihadist* methodology of self-annihilation as permitted behavior under Islamic law.

#### F. *Contrasting the Conventional Wisdom on “Suicide Bombing”*

My argument on the causes, sources, and reasons for self-annihilatory violence by Muslim military *jihadists* runs counter to much of the conventional wisdom on the topic. There are two heads to this conventional wisdom. First, most observers have concluded that the self-annihilatory violent behavior of the Palestinian military *jihadists* flows directly out of the deep anger, desperation, despair, and nihilism that pervades Palestinian society as a result of the oppressive Israeli occupation of Gaza and the West Bank, extremely difficult social and economic circum-

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209. *Id.*

210. YEZID SAYIGH, ARMED STRUGGLE AND THE SEARCH FOR STATE: THE PALESTINIAN NATIONAL MOVEMENT 1949-1993, at 625 (1997). *See also* ZIYAD AMU-'AMR, ISLAMIC FUNDAMENTALISM IN THE WEST BANK AND GAZA 94 (1994).

211. *See An interview with the Secretary General of Islamic Jihad*, AL HAYAT, Jan. 7, 2003, at 10. When the reporter pressed him, pointing out that Hizbu'llah did not exist in 1983, Shellah suggested that, while Hizbu'llah did not claim responsibility, the act was an inspirational one for Islamic Jihad. *Id.*

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stances, and the spectacular failure of the peace process.<sup>212</sup> These factors are certainly very important contributors to the current violence and the resistance in general. This Article has shown, however, that the origin of the actual methodology as well as the engine for the mobilizing appeal of self-annihilatory violence in Israel and the Occupied Territories was not despair but rather a *jihadist* phenomenon directly traceable to Shi'a theological sources and the Shi'a methods of war that sprang from those sources.<sup>213</sup> The anger and desperation of the Palestinian military *jihadists* did not lead to the discovery of the effectiveness of self-annihilatory violence. Rather, it was the teaching of Shi'a theology, and the success of Shi'a *jihadist* military methodology that flowed from this teaching, that caused self-annihilatory violence to become a favored tactic of the Palestinian military *jihadists*.

The second head of the conventional wisdom concludes that acts of self-annihilatory violence allegedly effected by organizations like Al Qaeda, e.g., the East African Embassy bombings, the September 11 attacks, the bombing of the U.S.S. Cole in Yemen, and the recent Paradise Hotel bombing in Kenya, are due to the influence of resurgent Wahhabism in the Sunni Islamic world. In point of fact, Wahhabism has very little to do with the use of self-annihilatory violence as a military tactic among contemporary *jihadists* acting for organizations like Al Qaeda. As has been shown, the reinterpretation of the law and theology of the military *jihad* that occurred during the 1960s among Sunni extremists, particularly those sympathetic to the view of the world that regards modern Arab governments as

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212. See, e.g., Avishai Margalit, *The Suicide Bombers*, N.Y. REV. OF BOOKS, Jan. 16, 2002, at 36-39.

213. This is particularly apt in light of the recent suicide attack by two young British nationals of South Asian/Pakistani decent, Asif Mohammed Hanif, of Hounslow, West London, and Omar Sharif Khan, of Derby. Hanif and Khan grew up in comfortable middle-class British suburbs and, although their actions have come as a shock to family and friends, they are now known to have had contacts with militant and radical Islamists both in the United Kingdom and the Middle East. In the attack, which was one of only a few to have been staged from Gaza, Hanif set off his explosive device outside a seaside bar in Tel Aviv, killing himself and three others while wounding sixty. Khan, a father of two, also attempted to detonate his device there but failed and fled, dropping his explosives and passport during a melee with a security guard and onlookers outside the bar. Khan's badly decomposed body was pulled from the Mediterranean Sea twelve days later, not far from the scene of the attack. Chris McGreal, *Mystery of the Last Hours of Failed Suicide Bomber Found Dead in Sea*, GUARDIAN, May 20, 2003, at 3.

“apostate” or “infidel,” never explicitly or implicitly concluded that self-annihilation was a permitted behavior in war. Instead, it was the Shi’a theologians and jurists who first raised the theology of martyrdom to the level of ideology and, using Shi’a sources, endorsed self-annihilation as a permissible behavior in a *jihadist* war. This reinterpretation was deeply influential and the methodologies that it spawned have swept the Islamic world, such that they now dominate the conceptions of the military *jihad* and martyrdom for all *jihadists*, whether Wahhabist, Palestinian Islamist, mainstream Sunni, or Shi’a. Those Wahhabis who now advocate self-annihilatory violence have appropriated the theology and methodology of these behaviors from the Shi’a.

#### VI. *NORMATIVITY OF THE NEW VIEW OF MARTYRDOM*

What is the meaning of all of this for Islamic jurisprudence? In answering, reference must first be made to a cardinal and inviolable principle of Islamic jurisprudence. This principle holds that no human action, including an action in a *jihad*, is valid unless it is accompanied by a valid intention [*niyyah*].<sup>214</sup> When a Muslim engages in a self-sacrificial act in a *jihad*, the actor’s intention is the first determinant in deciding whether the act resulting in death in such circumstances will qualify the actor as a martyr. The actor’s intention is known only to God but the Muslim community makes its best judgment about that intention on the basis of the actor’s behavior, the circumstances surrounding the event, and knowledge of the actor’s piety. Intention in these circumstances is viewed as the reason for the action of the *jihadist*. As the legal philosopher Joseph Raz has pointed out, reasons for action, closely related to reasons for belief, are complex yet fundamental facts that are useful in making judgments concerning the validity of any norm or normative system.<sup>215</sup> We must be careful to distinguish reasons for action that rely upon empirical facts and logic from those reasons for action that rely

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214. Imam Nawawi begins his venerable medieval guide to conduct, *Riyadh-us-Saleheen* [Garden of the Righteous], with citation to three verses of the *QUR’AN* (98:5; 22:37; and 3:30) that establish this principle. In the first *hadith* cited in the book, he quotes the Caliph Umar Ibn Khattab, who reported that the Prophet said, “intention determines the worth of a person’s actions and he will attain what he intends.” *IMAM ABU ZAKARIYA YAHYA BIN SHARAF AN-NAWAWI, RIYADH-US-SALEHEEN* 1-2 (S.M. Madni Abasi trans., 1984).

215. JOSEPH RAZ, *PRACTICAL REASONS AND NORMS* 15-20 (1975).

upon the actor's understanding of values and goods.<sup>216</sup> If the actor makes moral mistakes in asserting his reasons for action, these mistakes are much more pernicious than mistakes made on the basis of faulty logic or erroneous empirical data. Normative behavior premised on morally erroneous grounds is similarly much more difficult to expose and correct than normative behavior premised on logically or empirically erroneous assumptions.

Islamic teaching requires that the actor's intention in a *ji-had* be only "for the cause of God," and not for any other purpose. All Islamic scholars also agree that the achievement of justice on earth is the preeminent "cause of God" in a *ji-had*. They also agree that a sincere intention to effectively resist tyranny and oppression furthers "the cause of God." The Shi'a conceptions of *ji-had* and the purposes of martyrdom have placed great emphasis on the superiority of such intentions in situations where the actor is the subject of great tyranny and oppression. In 1984, just after the Beirut self-annihilatory attacks against American and French soldiers by members of Islamic Jihad, Sheikh Fadlallah published a book entitled *ALA TARIKH KARBALA [ON THE ROAD TO KARBALA]* that extolled the virtue of self-sacrifice in fighting an unjust and tyrannical ruler, just as Imam Husayn had done thirteen hundred years ago. Using simple but compelling arguments from Husayn's life, in impeccable Arabic, Fadlallah argued that death should be a "welcome outcome" of the struggle for a just and worthy cause, since it will lead to a blissful afterlife with God.<sup>217</sup> His argument is therefore twofold. First, it requires the existence of a condition of injustice and tyranny. Second, it focuses on the actor's intention to combat injustice and tyranny as the key factor in accomplishing the *ji-hadist* purpose. It also requires that the actor believe in the Islamic teachings about the afterlife.

Fadlallah's argument does not specifically suggest the method of self-annihilatory violence in accomplishing the *ji-hadist* purpose. He certainly does not go as far as Ayatollah Taleqani did in his 1963 speech in Tehran.<sup>218</sup> Yet, in his post-

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216. *Id.* at 24.

217. I am indebted to my research assistant, Ferris Nesheiwat, for help in translating Fadlallah's book.

218. *See supra* note 141 and accompanying text.

Beirut bombing public statements seeking to justify self-annihilatory violence against military targets, he relied upon the argument, based in logic rather than Islamic texts, that there is analytically no distinction between (1) the soldier who is in the position that Imam Husayn was in at Karbala and (2) the soldier who seeks martyrdom through self-annihilatory violence because "it is impossible to fight [the unjust and tyrannical oppressor] by conventional means."<sup>219</sup> The argument essentially adopts the position that Dr. Ali Shari'ati took, that is, the actor who intentionally seeks death after having reasoned that there is no other military alternative available qualifies as a martyr if the action will further the cause of the *jihad* and the actor's intentions are pure and pious. The reasoning required in making such a judgment would seem, therefore, to be military in nature, e.g., that all other military options are exhausted, that the method chosen accomplishes a significant military objective, that the method used is not easily defended, that it strikes a serious blow to the morale of the enemy, etc..

The logic of this argument thus requires that the *jihadist* must rationally investigate the military situation and satisfy himself that there are no other alternatives, militarily, other than self-annihilatory violence, in order to acquire the correct Islamic intention and the right "reason for action," to use Joseph Raz's formulation. The *jihadist* must also be reasonably sure that this method of combat will accomplish significant military objectives. Sheikh Fadlallah's hypothetical in fact does describe situations that soldiers in war sometimes find themselves in and is consistent with well-established military norms. For example, if a soldier in war is trapped in a cave, with no exit and he knows that the enemy is about to enter the cave to capture or destroy him, he may booby trap himself (or booby trap the cave in a way that will also destroy him) so as to kill or seriously injure his adversaries at the time they seek to capture him if this will give his side an advantage.<sup>220</sup> This is a favorite tactic of guerilla fighters and

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219. See *supra* note 200 and accompanying text.

220. See 1980 U.N. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, in DOCUMENTS ON THE LAWS OF WAR 515-60 (Adam Roberts & Richard Guelff eds., 3d ed., Oxford University Press 2000) (1982); *The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps, and Other Devices (1980 Protocol II)*, as amended by *Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps, and Other*

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even of combatants in conventional warfare. In any normative system, the soldier would be recognized as a martyr and probably honored posthumously by his peers.

The validity of the *jihadist's* self-annihilatory action, by this logic, therefore turns on the accuracy of the *jihadist's* assessment of whether there are other military alternatives available and whether the military advantage gained by the *jihadist's* actions are a sufficient justification for his actions. This would appear to be the only basis by which the jurist could avoid condemning the behavior under the Islamic prohibition against suicide. The jurist would certainly not require that the *jihadist* acquire perfect knowledge but rather reasonably sound knowledge — based on a competent investigation of all of the known alternatives. If the soldier does not do this, he is actually failing to discharge his *jihad* obligation. The virtue of courage is found in the fact that it is a brave act accompanied by reason. The *jihadist* would have to analytically be very much like the hypothetical soldier trapped in the cave. Of course, one has to accept the Islamic view that surrender and compromise is not a valid military alternative. This is certainly a valid norm in a *jihadist* system. Arguably, Imam Husayn was in this kind of position.

There may, on the other hand, be serious questions raised with respect to whether contemporary self-annihilating *jihadists*

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*Devices (1996 Amended Protocol II)* at *id.*, at 528-32, 536-48. Protocol II prohibits the use of such weapons against civilians or in highly populated areas. It also prohibits use of such weapons when they are not designed to accomplish a military objective. The protocols also prohibit the planting of such weapons in objects such as children's toys, on sick, wounded, or dead persons, in objects of a clear religious nature, in medical equipment, or other objects that would lull the adversary into a false sense of safety. Even with these restrictions, the thrust of the Convention and the Protocols appears to permit booby-traps and similar weapons if they do not cause indiscriminate injury or destruction and they are directed at military targets, designed to further military objectives.

Further, customary law of war and the Protocols stipulate that the combatant must not engage in treachery or perfidy in using such devices, and he or she must honor the principles of proportionality and discrimination. The principle of proportionality involves the making of choices in relation to the military advantage to be gained. The force used must be consistent with a rational and definable military objective or a proportionate response to the enemy's military tactics. The principle of discrimination involves judicious choice of weapons, methods, and targets. *Introduction to id.* at 9-10. These general principles are expressed in military manuals by emphasis in three concrete customary principles: (1) military necessity; (2) humanity; and (3) chivalry. Whether the self-annihilatory tactics and methods condoned by Fadlallah and other contemporary Islamic jurists would or could comply with the customary international law of war and the Protocols is beyond the scope of this Article. *Id.*

have in fact exhausted all military alternatives available to them. If they have not, or if the individual self-annihilating *jihadists* have not individually satisfied themselves that there are no other military alternatives, their actions may very well be invalid and unlawful, both as a matter of strict philosophical logic and under recognized principles of Islamic jurisprudence. The responsibility placed upon the Islamic jurist who is asked to approve such actions is thus extremely grave. Although the reinterpretive approach of Sheikh Fadlallah and his Najaf colleagues did provide an important reason for action to Islamists who seek to advance the *jihad*, by its own logic it did not make the prohibition against suicide irrelevant. There has in fact been no effort to avoid the formidable Islamic prohibition against suicide and self-destruction. Indeed, intentional self-annihilation without good cause is arguably prohibited by the Qur'an (4:29-30) and certainly by the *hadith*.<sup>221</sup>

Fadlallah's argument assumes that such self-annihilatory actions are only valid if they are directed toward military adversaries. His argument would not permit such actions against civilian populations and other non-combatants. This is consistent with well-settled principles of Islamic law and principles of international humanitarian law and the customary law of war. The *hadith* and the Sunni and Shi'a *fiqh* as well as the modern interpretations of these texts all condemn any form of military aggression or violence against non-combatants.<sup>222</sup> The recent self-annihilatory attack on the headquarters of the International Red Cross in Baghdad, using an ambulance filled with explosives,<sup>223</sup> therefore violates every principle of Islamic jurisprudence I have described. The driver of that ambulance was unfortunately misinformed or misadvised, and his family should not celebrate his martyrdom, as it does not exist.

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221. IMAM MUHAMMAD SHIRAZI, *WAR, PEACE, AND NON-VIOLENCE: AN ISLAMIC PERSPECTIVE* 57 (2001) (relying on the Qur'anic verse that provides: "[A]nd do not kill yourselves, surely Allah is most merciful to you. Whomsoever does this out of enmity or oppression we will put him in a fire. This is an easy task for Allah."). The author and translator is a prominent Shi'ite scholar. He takes the position that the verse categorically prohibits suicide. See *supra* note 85 (discussing this verse in text).

222. PETERS, *supra* note 53, at 119-33; QUTB, *supra* note 77, at 211; JANSEN, *supra* note 182, at 217.

223. See Rajiv Chandrasekaran, *Car Bombs Kill at Least 35 in Baghdad; Red Cross, 3 Police Stations Hit, Killing 1 American; Foreign Fighters Blamed*, WASH. POST, Oct. 28, 2003, at A1.

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The Palestinian *jihadists* have sought to justify their actions against civilians by arguing that all Israeli civilians are fair game because Israel is essentially a “military barracks” by virtue of Israel’s rule of universal conscription and the draconian nature of the Israeli occupation. The argument invoking universal conscription as a justification is plainly specious. The Palestinian argument also ignores the fact that many non-Israeli non-combatants are living and working in Israel and a number have been killed as a result of self-annihilatory violence against civilians in recent years. There is also no evidence that the individual Palestinian self-annihilating *jihadists* have thoroughly evaluated their situations and rationally concluded that there is no other military alternative. Very few are trained militarily and most seem to place great trust in the judgment of their military handlers. This may be acceptable, but if one’s salvation is at stake, it would seem that one would want to know that his or her behavior is in fact the right thing under the circumstances. The Palestinians, following the methodology of the Shi’a, have made brilliant use of the notion of martyrdom as a mobilizing tool. Consequently, the individual actors tend to focus more on the eschatological rewards rather than the rational investigation required prior to taking such action. The Islamic law, even as reinterpreted, seems to require otherwise.

As might be expected, Sheikh Fadlallah’s views are not representative of the entire Shi’a jurisprudential spectrum. There is another important discussion of these issues by a prominent and important Shi’a Lebanese jurist, Ayatollah Sheikh Muhammad Mahdi Shams el-Din, in a book that has recently been published in Beirut. Ayatollah Shams el-Din also spent much time in Najaf during the time of the renaissance and he is an accomplished authority on Shi’a jurisprudence and political theory. In his book, *FIQH AL ‘UNF AL MUSALLAH FI AL ISLAM* [THE JURISPRUDENCE OF ARMED STRUGGLE IN ISLAM]<sup>224</sup> Ayatollah Shams el-Din does not take a narrow view of the problem of self-annihilatory violence. His purpose, instead, is to “research the roots of the legitimacy of armed struggle in Islamic jurisprudence.”<sup>225</sup> He

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224. AYATOLLAH SHAMS EL-DIN, *FIQH AL ‘UNF AL MUSALLAH FI AL ISLAM* (Al Muassasah al Dawliyya, Beirut 2001).

225. *Id.* at 22. I am indebted to Ferris Nesheiwat for assistance in translating Ayatollah Shams el-Din’s work.

discusses when armed struggle is justified in Islamic law<sup>226</sup> and he offers an extensive discussion of the martyrdom of Husayn in relation to the law of armed struggle. He refers to Husayn's actions as a *thawra intihariyya* [a suicidal revolution] and is critical of the *fuqaha* who seek to use Husayn's revolution to justify and legitimate armed struggle against a corrupt and tyrannical ruler. He points out that Hasan's actions (Husayn's brother), pursuing compromise and acceptance of the tyranny would be a valid paradigm to emulate in cases where Islam is not threatened. The reason Husayn is important, in his view, is because, in the case of Yazid, the entire Islamic faith was threatened and that such action as Husayn took (the "suicidal revolution") was appropriate and necessary because of the threat to the very existence of the faith. In his view, the greatest achievement of Husayn's revolution was the accomplishment of a complete separation of the religious authority of the Caliphate from its political authority. It is this event that is the basis for the conclusion of many Shi'a jurists that they should eschew direct involvement in political affairs. His choice of words, describing Husayn's actions as a "suicidal" act would seem to imply rejection of the ideology of self-annihilation as a mobilizing tool in a *jihad*.<sup>227</sup>

A. *The Acceptance of the Shi'a Norm by Sunni Jurists*

It is also interesting to note that important Sunni *ulama* have now accepted the validity of the new battlefield norm, at least in the case of the Israel and the Occupied Territories. Unfortunately, their reasoning is extremely uncritical and disappointing. For example, Sheikh Yusuf Qaradawi, a leading Sunni cleric based in Qatar, has issued several *fatawa* validating Palestinian self-annihilatory violence on the basis of the argument that Israel and the Occupied Territories comprises a special situation for Muslims and such actions there, even against civilians,

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226. According to Shams el-Din, there are four instances: (1) *jihad*; (2) battling against *bughat* [rebels or brigands]; (3) commanding what is right and forbidding what is wrong; and (4) self defense. *Id.* at 41-42. In the case of rebellion, the ruler can only use violence against the rebels if he is just and legitimate. The formula "commanding what is right and forbidding what is wrong" [*amr bi'l ma'ruf wa'l nahy al munkar*] is a Qur'anic injunction that is incumbent upon all Muslims. While relevant to this discussion, it is a vast subject and beyond the scope of this Article. See generally MICHAEL COOK, *COMMANDING RIGHT AND FORBIDDING WRONG IN ISLAMIC THOUGHT* (2000) (discussing the issue in relation to all of the schools of jurisprudence, including the Shi'a schools).

227. SHAMS EL-DIN, *supra* note 224, at 129.

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are not suicide and are not illegal under Islamic law. In a *fatwa* issued on April 10, 2002, dealing with the permissibility of women engaging in self-annihilatory violence in Israel and the Occupied Territories, he defined a “martyrdom operation” as one “carried out by a person who sacrifices himself, deeming his life less value than striving in the Cause of Allah, in the cause of restoring the land and preserving the dignity.” After citing 2:207 of the Qur’an, Sheikh Qaradawi distinguished suicide from such “martyrdom operations” by suggesting that suicide is born out of despair, whereas martyrdom “is a heroic act of choosing to suffer death in the Cause of Allah” and it is considered “one of the greatest forms of *Jihad*.” He indicated that, in his view, Muslim women in Israel and the Occupied Territories could also engage in this form of *jihad* — without permission of their husbands or parents.<sup>228</sup> Sheikh Tantawi, the Grand Sheikh of Al Azhar Mosque in Cairo also recently issued a largely unreasoned opinion asserting that “martyrdom operations” against civilians in Israel and Palestine were valid exercises of the *jihad* obligation and qualified the actor for martyrdom status.

These opinions appear to be erroneous and grossly irresponsible under the Islamic law as I have outlined it here. It is important to note that the Sunni *ulamaic* opinions have come late in the history of this phenomenon. When the self-annihilatory violence began in the Occupied Territories in the mid-1990s, the Sunni *ulama* were slow to come to a conclusion about the validity of such actions. This was perhaps because of the difficulty of the problem but it is in sharp contrast to the approach of the Shi’a *ulama* in relation to self-annihilatory actions taken by the Iranians and by Hizbu’llah. One can see that the structure of the Shi’a juridical system lends itself to rapid and certain decision-making in jurisprudential matters. Be that as it may, the norm permitting self-annihilatory violence in a military *jihad* seems to be now widely accepted by Muslims, although the *ulama* continue to condemn the terrorist actions of Al Qaeda because of their penchant for killing civilians.

Of course, there are many other *jihadist* actions that are not intentionally self-annihilatory and will still qualify the actor for

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228. Sheikh Yusuf Qaradawi, *Fatwa, Palestinian Women Carrying Out Martyr Operations*, May 22, 2003, available at [www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=68511](http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=68511).

martyrdom status. One should recall that Baraa' Ibn Malik's heroic effort,<sup>229</sup> while arguably condemnable by conservative Sunni jurists because he sought martyrdom, was not an act of suicide because the contemplated death would not have been by his own hand. This seems to be the crucial distinction that the contemporary theology of martyrdom ignores. Even though the logic of the new theology may be flawed, it is still undeniable that it has fundamentally altered the law of *jihad* in the entire Muslim world.<sup>230</sup> What we now have is a new *fiqh* of the law of the military *jihad*. The implications are enormous.

### CONCLUSION

This Article has identified the origins of the practice of self-annihilatory violence in the context of *jihadist* wars prevalent today in many parts of the Muslim world. As part of this task, the Article traced the development of the classical concepts in the Islamic law of war (military *jihad*). The essence of the law of military *jihad*, first enumerated in the Qur'an, Sunnah, and the classical *fiqh*, eventually evolved into a concept of defensive war. In the classical period, the obligation to participate in the military *jihad* was incumbent upon every able-bodied Muslim male when the conditions for the *jihad* dictated action. In the exercise of this duty, *shahada'* was never an end in itself. Rather, the intention of the believer and the possibility of death on the battlefield defined whether the believer was to be treated as a *shahid*.

This Article has also shown that there is an important distinction between the Sunni and the Shi'ite concepts of martyrdom in the military *jihad*. The event that has come to shape the Shi'ite conception of martyrdom is the battlefield death of Imam Husayn. Husayn's martyrdom is manifested in rituals, celebrations, and mourning but, above all, it is an example of self-sacrifice to be emulated by all Shi'a Muslims. Such an example has no parallel in the concept of *shahada'* in the Sunni tradition. However, the efficacy of the example of the martyrdom of

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229. See *supra* notes 88-90 and accompanying text.

230. RAZ, *supra* note 215, at 170 (acknowledges that there is a long jurisprudential tradition that is often invoked in favor of arguments that a law is valid. The tradition holds that the "key to the problem of the normativity of law is not that laws *are* valid reasons but that people *believe* that they are") (emphasis in the original).

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Husayn, as a mobilizing ideology by militant Muslims, remained largely dormant until the middle of the twentieth century.

By the second half of the twentieth century there was a gradual upsurge of political Islam that came to reinterpret the classical *fiqh* of *jihād*, and consequently of *shahada*' in response to the twin challenges of colonialism and nationalism. It was in this atmosphere that the theological concept of martyrdom was re-considered and presented as a rallying ideology to face these two challenges. The culminating point in this process was the Iranian Islamic Revolution. It endorsed the methodology of self-annihilation as a form of martyrdom. This methodology was later embraced by Hizbu'llah, the Palestinian *ihadists*, and ultimately, Al Qaeda. This signifies the convergence of Shi'a and Sunni visions of martyrdom as a self-annihilatory *ihadist* idea, with direct links to a new trans-sectarian theological and jurisprudential view of the martyrdom of Imam Husayn.

Although the Palestinians are overwhelmingly Sunni and although they have shown no inclination to adopt the tenets of the Shi'a branch of the faith, the wholesale incorporation of the Shi'a approach to martyrdom, with its emphasis on self-sacrifice, eschewing the more cautious Sunni approach to such actions, is a great triumph for the Shi'a internationalist cause and is a significant step for the Shi'a in achieving their goal of effecting a rapprochement between the Sunni and Shi'a branches of the religion. The actions and pronouncements of the Shi'a *ulama* in a post-Saddam Hussein Iraq will be critical in advancing this goal. It is acknowledged that the pan-Islamic project is one of the prime objectives of the Iranian Islamic revolutionary government. While some have argued that this policy has failed,<sup>231</sup> this is far from a foregone conclusion. The apparent success of the martyrdom ideology seems to suggest otherwise.

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231. WILFRIED BUCHTA, *The Failed Pan-Islamic Program of the Islamic Republic: Views of the Liberal Reformers of the Religious "Semi-Opposition" in IRAN AND THE SURROUNDING WORLD: INTERACTIONS IN CULTURE AND CULTURAL POLITICS* 281-303 (Nikki R. Keddie & Rudi Matthee eds., 2002).