

# **Transgress Not the Limits: Just War Theory in Early Islamic Theology**

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## **Abstract**

*Since the beginning of America's "war on terror," the permissible targets and methods of warfare within Islamic theology continue to be the subject of much discourse among a global audience. An examination of sources illuminates rich traditions of regulation applying to warfare in Islamic jurisprudence. These traditions range from distinction of legitimate targets to the proportionality of destruction, and taken as a totality, they represent a demonstration of concern for the principles of Just War Theory many decades before a codified western tradition of such began.*

*This essay offers a concise introduction to the classical regulations on warfare within Islamic jurisprudence along with their place in the modern context. While not an exhaustive effort, the paper offers an understanding of what these Islamic limitations on violence are and how they are circumvented in the modern context by extremists.*

*“Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors.” – Qur’an 2:190*

When discussing Islamic theology in a modern context, the issue of violence and the justifications as to when and how it may be applied will inevitably be the subject of several questions. The world stage for discussion is dominated by the revolutions of the Arab Spring, the American wars and interventions in the Middle East, the continued legacy of Islamic Revivalism, and the operations of groups of so-called “Islamic Radicals” or “Muslim Fundamentalists.” Observers outside the religion of Islam have a deep, and understandable, concern over the rhetoric and process of religious justification undertaken by a certain strain of Islam that has proven itself both willing and able to commit acts of violence. Likewise, within the Muslim community there is genuine and intense debate over the proper interpretation of the historical and religious sources considered central to Islam: The Qur’an<sup>1</sup>, the *Hadith* of the Prophet Muhammad<sup>2</sup>, and the earliest generations of Islamic scholars. Many authors and commentators<sup>3</sup> have framed this internal debate as no less dramatic than a battle for the “soul” of Islam.

Since the earliest days of Islam, there has been vigorous debate as to when violent means are justified from the standpoint of the religion and to whom and when those means should be applied. In the philosophical context, Just War Theory has always been the attempt to examine the relationship of justice and warfare and is a construct composed of two main areas of inquiry: *Jus in bello*—justice in war, and *jus ad bellum*—justification for war. In the Western tradition, Just War Theory originates largely with the writings of St. Thomas Aquinas. However, when viewed in the context of the whole Islamic tradition, the legal and theological debates within the Islamic framework include all of the elements that are generally supposed to constitute a doctrine of *jus in bello*, justice in war. In the early juridical sources, there is rarely, if ever, a single specific text that can be considered to encompass the total structural system of argument and ruling that fits within the accepted boundaries of a Just War Theory. But I think that given the wide range of diverse views within early Islam and the military realities of the situation in the Hijaz desert region, along with Islamic communities’ relationships with the empires bordering them, enough discussion exists to demonstrate that an early form of Just War Theory was in clear if fitful development.

Islam as displayed in the Qur’an and the Hadith sources makes a strong attempt to be an eminently practical religion in regards to violence. The words of the Qur’an seem to take for granted that a stance of pacifism is neither sufficient nor desirable as a means to meet all the challenges the Islamic community might face. There are multiple verses encouraging peace, indeed upon close inspection, it is clear that any verse condoning violence is in

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1 The holy scriptures of Islam

2 The collected sayings and traditions attributed to Prophet Muhammad, taken to be prescriptive norms worthy of emulation.

3 Excellent introductory examples include Reza Aslan, Khaled Fadil, and Karen Armstrong

close proximity to verses exhorting believers to understand that peace is better. But the Qur'an also spends ample time encouraging believers not to shrink from the martial duties required in support of the community. The Qur'an contains verses that command fighting such as 2:216, which explains to hesitant believers that fighting is good for them; 4:74, which states that those killed for their faith in battle will earn great rewards; 3:167, which suggests that any who hesitate to fight for fear of death are hypocrites or non-believers; and of course, 9:5, the famous "verse of the sword," which commands Muslims to slay the *mushrikun*—the unbelievers—wherever they are found. The Arabic word *mushrikun* literally translates as "those who associate partners with God" but is typically translated as unbeliever or polytheist in English translations. These few examples, among many others in the Qur'an, amply serve to demonstrate that there is no moral timidity about the occasional necessity for violence in the in the early Muslim world.

Despite this, the combat called for in the Qur'an could not be accurately described as bloodthirsty or unrestrained. The martial aggression of the early Islamic empires waxed and waned as any civilization's military history might, and frequent sometimes impassioned attempts are made to depict members of the early Muslim community as zealots sweeping aside their neighbors in a wave of religious fervor and offering the choice of conversion or the sword. However, since the Qur'an contains numerous restrictions and limitations intended to curb violence, and the *Hadith* contains even more, this interpretation of early Muslims does not withstand scrutiny. Attempts to interpret and apply the "limits" referred to in 2:190, in which the Qur'an asserts that in fighting believers should not transgress certain boundaries of behavior, led to intellectual movements, which constituted a detailed Just War Theory hundreds of years before St. Thomas Aquinas would develop and codify the ideas of earlier philosophers to form the Christian equivalent.

The concept of *ius in bello* with which this paper is concerned can be identified conceptually in the Hebrew scriptures and Deuteronomical commands on limiting collateral damage for the early Jewish people. In the west, the main source for Just War Theory is largely a product of the Roman Catholic tradition, particularly St. Thomas Aquinas and St. Augustine of Hippo. The Western tradition of justice in warfare was originally conceived as a sort of theological exercise. In short, it was an attempt to answer the question: If Christianity is ideally a religion of brotherhood in Christ, and given Jesus' famous biblical admonishment that he who lives by the sword is doomed to die by it, then how does Christianity confront the realities of a world in which it seems that war is nearly inevitable, whether Christians choose their participation or not? Towards the 16<sup>th</sup> century these religious underpinnings were replaced by a concern for international treaty and contract models of international law. Here we see a close parallel that mirrors the Islamic need to reconcile an absolutist belief in scriptural divine commands with the practical needs of existence in a culturally and religiously diverse world.

The directives of traditional Just War Theory require that, once violence has been initiated, several types of ethical concerns must be respected as much as possible in order to maintain the justness of the war. These concerns include: making a proper distinction

between combatant and non-combatant, ensuring that responses and destruction are proportional to the desired objective, ensuring that the minimum force necessary to finish the military objective is used, seeing that captured enemy soldiers are treated fairly and humanely, and providing that no methods which are considered unjust or evil are used as a weapon of warfare. In modern times, this last concern has been fully expanded into a vigorous discussion surrounding chemical and biological warfare, but has also traditionally included acts such as rape.

A primary ethical concern for *jus in bello*, then, is the question of just practice. While the justice of jihad was never in question—any legitimate jihad was just—if a particular military expedition was not just, then it was by definition not a legitimate “striving in the way of God.” As is the ideal for all of Islamic theology, the rules governing warfare for Muslims are supposed to derive from divine revelation in the form of the Qur’an and the *Hadith* sources.<sup>4</sup> The bulk of the task for Islamic jurists was in applying the source material to new situations as they arose and teasing out distinctions for those areas that are addressed only obliquely. The challenge of meeting new innovations in both the technology and methods of violence required the Islamic jurist to attempt to craft an internally-coherent system of principles and theory out of the sometimes extremely specific and highly contextualized examples provided by revelation in the Qur’an or Hadith. In this way, the concepts of Just War Theory in Islam grew alongside the development of the structure of *shari’a* itself. *Shari’a* has always had this dual role within the Islamic system. The Arabic word means “path” or “road” and is in Islamic theology the perfect and eternal unchanging law of God, his dictates for how humanity is to order their lives. On the basis of this ideal, jurists attempting to model *shari’a* in earthly legislation created a complex and highly technical legal field that has continually evolved over the course of Islamic history. In the early and classical periods, the struggle was to combine practical and immediate needs of the current context with the desire to adhere (at least by analogy) to the dictates that were believed to be products of divine revelation. These sources can seem confusing and even contradictory at times, but they provide a broad enough basis to have served as the foundation for Islamic legal rulings relating to each of the typical considerations required of a classical Just War Theory: distinction of targets, proportionality, military necessity, fair treatment of prisoners of war, and right means of waging war.

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4        Though a complete overview of the methods by which various schools of theology have analyzed and interpreted these sources are beyond the scope of this paper, it is useful here to make a brief overview. In formulating Islamic jurisprudence, the Muslim scholar is meant to follow a fairly simple process. The Qur’an and the *Hadith* are to be textually analyzed along with the context of the circumstances in which the particular verse or tradition was formed. In cases where there are multiple interpretations possible or there are no explicit instructions on an issue, the jurist is supposed to apply the weight of precedent to the matter and follow the judgment of the majority of respected scholars who have come before. If new information is available which those previous scholars did not possess or the situation seems to otherwise be unique, then analogical reasoning is supposed to be applied, looking for relevant similarities to other more familiar situations. Finally, permeating all of this process, jurists are to use their own independent judgment in applying what they feel the principles “behind” the sources would direct for a decision. Schools of Islamic legal thought primarily differ mostly on which parts of this process are given the most weight.

Generally, in the Qur'an itself some form of limitation on killing is recognized (2:190), that life can only be taken with just cause (17:33), that people who are not actively hostile are to be made peace with (4:90), and that all existing peace agreements must be honored (9:4). The *Hadith* contains a number of more specific regulations that further combine to explicate how these general limitations are carried out. Pacifism is not even considered as a possibility in the harsh environment of the tribal raid-driven society of the early Arabian Desert. Whether in the face of oppression or existential threat or in order to guarantee the freedom to practice the Islamic religion in an area, violence is considered an acceptable response. In contrast to classical Just War Theory, the early discussion amongst scholars never seems to be *if* Islamic warfare is just. As a matter of theological doctrine, for early Muslims the governing of all the world in Islamic terms would be the greatest good that could happen for mankind, and imposing of this goal by invitation and, when necessary, by warfare was the first concern of the state.

Indeed, by the very juridical definition of the word, any legitimate jihad would be a just and righteous undertaking. Any such undertaking that was not just and righteous would not be a true jihad. Thus early Islamic jurists debated issues such as the permissibility of violence against Muslim political rebels, and what duration and effort should be expended in non-violent conversion attempts. Examples of these early debates are the Sunni/Shi'a split over the succession after Muhammad. The groups of Ash'ari and Khawarij split over whether rebellion against an impious ruler could be justified and how frequently the invitation to embrace Islam and end hostilities must be renewed. In general though, a state of warfare was assumed to exist between the Muslim and non-Muslim state, the *dar al-Islam* (Land of Islam) and *dar al-harb* (Land of War) respectively.<sup>5</sup> As seen in Medieval Western Christendom, which also explicitly assumed a universal imperative for all mankind, assuring the opportunity of unbelievers to live under a government ruled by God's standards was often treated as its own *de facto* justification for warfare. Even given this truth, the jihad did not necessarily constitute a program of endless violence. In *War and Peace in the Law of Islam*, Majid Khadduri (1979) notes some jurists said merely being prepared for war was enough to fulfill the communal obligation of jihad, and the obligation to call all the world under the authority of Islam had many various non-violent methods of being pursued. This shows a clear example of how the early debate on this matter was, at best, divided. Furthermore, this is shown as the early Islamic scholars clearly assumed the destiny of the whole world was to follow the religion of Islam; however, the obligation to fight in order to make this happen was not universally accepted.

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5 Some early Islamic scholars (most notably the Shafi'i) recognize a third division of the world into the *dar al-sulh* (Land of Treaty or Peace) which encompassed non-Muslim states in which the freedom to practice Islamic religion was protected and treaty relations involving a ceding of some monetary tribute or land to the Muslim state was made either before hostilities began or after a prolonged war with no clear winner. Other schools of thought insisted that such entities, by ceding tribute and accepting the right of Muslims to worship, became part of the Islamic world by default, and should be considered under the protection and guidance of the Islamic Leader, regardless of whether or not the factual form of government changed.

The question of conduct *in* war was frequently of more importance to the early Muslim jurist than of whether or not to go to war. Early scholars were consumed with questions about the incorporation of newly encountered military strategies and weapons, whether military service in jihad was the duty of every individual in the community or only some, the right leadership and authority for the conduct of war, and the manner in which troops should behave. However, while religious scholars grappled with these questions in the formation of the different schools of Islamic theology and jurisprudence, the practical needs of the Islamic state and the political considerations of treaty, warfare, and expansion needed to be conducted and carried out by political leaders. The earliest unified Islamic communities developed rules regarding their actions practically at the moment they were needed. Michael Bonner (2008) points out in *Jihad in Islamic History* that like most Islamic law, doctrines of religious jihad developed separately in a tense co-existence with the political functions of the Islamic State and even then, not until at least the 8th century. This points to the likelihood that in at least some early Islamic states, the scholars were explicitly encouraged by the political powers to interpret religious rulings in the way most favorable to the foreign policy of the time.

Within that process of development though, we see a number of threads constraining the behavior of fighters, both in the arguments of Islamic jurists debating the *Shari'a* sources for jihad and in the works of writers like Al-Farabi and Ibn Khaldun who adapted philosophical arguments to highlight the issue of justice in warfare (Bonner 2008). Al-Farabi in particular was of the opinion that the invitation to Islam should be made through reasoned debate and missionary-type efforts; only the utter failure of these efforts should lead to violence as a possible option. One of the earliest recorded rules of warfare after the prophet Muhammad, given by the first Caliph of Islam, Abu Baker, was an address to the forces on various restrictions: to not mutilate bodies; kill no aged men, women, or children; destroy no livestock, fruitful trees, or palm trees except as needed for food; and leave unmolested those whose lives were dedicated to the monastic service of a religion (Khadduri 1979). Such restrictions from the earliest leaders after Muhammad showed an initially very clear concern for minimizing the damage and deaths in any armed conflict with Muslim troops. In fact, the ideal was to be able to achieve the military objective with as little force as possible.

Islamic jurisprudence early on shows a concern for the principle of distinction not only in questions of Muslim vs. Non-Muslim targets but also distinguishing between several categories of Non-Muslims, only some of which were considered the legitimate targets of jihad. In the *Risala* of Shafi'i (1987) an excellent example is made in which the Imam, or religious leader, attempts to reconcile two differing traditions. The Prophet was known to have prohibited the killing of women and children; however, there was also a *Hadith* transmitted which seemed to allow the killing of women and children during a surprise attack at night. Shafi'i brings together this seeming contradiction by explaining that during a surprise attack at night when there is much confusion, a Muslim warrior should not be held liable for killing women or children by accident. However, since the bulk of the

prophetic tradition was against it, the warrior should in fact be punished in any case in which it was possible to distinguish and recognize the target. Shafi'i further elaborates the religious principle in question: women are not valid targets since they do not fight. And children are not valid targets since they neither fight nor possess the mental capability to distinguish belief from unbelief. These same principles would later be extended, in the majority of scholarly rulings, to apply to the insane, the blind, and religious hermits.

The principles of proportionality and military necessity can be discovered in early Islamic legal concern as well. In fact, there were fewer than a handful of jurists in the 8<sup>th</sup> century who accepted the legality of unnecessary destruction without restriction. The practice of Abu Bakr was to order his soldiers to refrain from destroying crops and livestock except for taking what was absolutely required for their own food or the defeat of the enemy. This practice was then closely followed by most of the Caliphs and reinforced by jurists. The destruction of residential areas, if attacks were not being launched from those areas, was also forbidden (Abul Ala Mawdudi 1981). In general, the use of fire and siege engines was limited based on the strength of the enemy's fortifications and the judgment of the commander in the field. For instance, a ruling by the early jurist al-Shaybani stated that if the enemy were employing what in modern times would be referred to as a "human shield"—mingling behind or among a population of people which would normally be considered non-combatants—then attacks, even with siege weapons which wrought large-scale destruction, were permissible. This was the case even if non-combatants would be harmed, so long as reasonable care was taken to minimize the loss.

The treatment of prisoners of war is regrettably somewhat more mixed in the Islamic tradition. It is a defensible argument that in many ways the practices of the early Islamic empires in relation to POWs was a step forward in terms of comparable civilizations of the age; however, the practice of slavery alone casts a negative light on the record. Living persons were generally considered part of the spoils of war and divided into *asra*, which would be what we now call prisoners of war, and *sabi*, women or children to be taken as slaves and property (Khadduri 1979). In general, the main legal options for the Muslim commander concerning prisoners of war was to ransom them for the return of Muslim prisoners, force them into slavery (the new slaves being divided equitably among the warriors who were involved in the battles), or execute them. The majority of the predominant legal scholars of the 8<sup>th</sup> and 9<sup>th</sup> centuries recommended execution only when ransoming prisoners would unreasonably restore strength to the enemy or there was some other compelling state interest in the execution. In practice, the women and children who comprised the *sabi* were immune to execution, only a small handful of documented cases exist where such killing took place. Interestingly, the treatment of prisoners of war is perhaps the one consideration in warfare that changes the most throughout the history of the Islamic empires as they transition from ruler to ruler and from dynasty to dynasty. The *Hadith* do seem to contain clear instructions that no one should be killed in captivity or bound, and that no prisoner should be put to the sword (Mawdudi 1976). And yet Muhammad himself, on at least two

occasions, ordered prisoners to be executed when they had been guilty of particularly harsh war crimes.

The final consideration of *jus in bello* in traditional Just War Theory is often referred to as *mal means*, which stipulates that soldiers may not use weapons or other methods considered evil such as sexual assault, force soldiers to fight against their own side, or use certain kinds of weapons. Of course, restrictions on chemical and biological warfare as it is known in the twentieth and twenty-first century are not addressed in early Islamic jurisprudence; however, there was considerable debate among the various schools on the issue of poison. Most scholars allowed the use of poisoned arrows or dumping into a militarized water supply with restrictions, but a very small minority either forbade it as causing excessive pain, or allowed it without restrictions. We also find general protections restricting the jihadist from free license to do as he wishes with an area under attack. There are generally accepted prohibitions on the destruction of residential areas, restrictions that prevent the Muslims from taking goods from civilian populations without paying fair value for them, and restriction on the use of fire. Mutilation of the dead or the display of corpses in order to instill fear in the enemy was also forbidden by most early scholars (Mawdudi).

One of the many arguments fielded by those who believe that Islamic history and theology are composed of unrestrained violence against the unbeliever is that the acts of modern militant self-styled “jihadis” acting globally with such groups as Al-Qaeda, Taliban, Hamas, or any number of other organizations identified as terrorists by large segments of the international community seem to support this idea. The spokesmen for such groups and lone actors following in their footsteps unquestionably speak in Islamic terms, use Islamic sources, and focus on religious goals as their motivation for undertaking acts of terror. It might be granted that at least the leadership of these sorts of groups, while usually not recognized scholars of Islamic law and jurisprudence, are not ignorant of their religion, and they clearly have a certain understanding of a religious duty to undertake often terrible violence, which can include violence against non-combatants and utilizing means such as suicide bombers.

A commonly repeated viewpoint in the public arena is that moderate and liberal Muslims advocating peace and democracy do not “understand” their own religion properly. This stance towards Islam is ironically also an argument that is very easy to imagine terrorist groups making in recruitment efforts. Indeed, Osama Bin Laden himself made statements to journalists to the effect that when the truth and gravity of the situation became apparent to Muslims all over the world, they would understand that the actions of people like embassy bombers would be seen as permissible and that acquiring any kinds of weapons with which to fight is a religious duty for Muslims (Rahimullah Yusufzai 1999).

The existence, then, of Muslims who are quite knowledgeable about the Shari’a sources and still come to conclusions such as making non-combatants permissible targets of terrorist acts, poses a problem for the observer with a thesis that early Islamic law showed a healthy concern for justice within warfare. We may point out, as does John Kelsay in his invaluable book *Arguing the Just War in Islam* (2008), that the first fully developed theories

of Islamic law were seemingly custom-tailored to disagreement and open interpretation, which would cause different schools of thought to take very different stances on the same issues. One could also consult the historical and socio-political contexts of both ancient battles of Islamic empires and modern-day terrorism. Compelling arguments have been made that religion is but one of many competing factors in the formula that leads to violent acts of terrorism.

For example, In the early 2000's the influential cleric Yusuf Al-Qaradawi made televised statements on Al-Jazeera and British televised news to the effect that women and children were legitimate targets of attacks in Palestine (though not outside those territories) due to what he calls the "militarized" nature of Israeli society, where there is mandatory military service and women may also serve in combat (Abdelhadi 2004).

In the case of Al-Qaeda, one of Osama Bin Laden's statements aired on Al-Jazeera with an interviewer argued that all Americans, even civilians, could be considered legitimate targets of violence. His argument is that, in a representative democracy where the military is funded by tax-dollars, paying taxes and continuing to live in the country is support for and agreement with the actions of the American government. Bin Laden references this most explicitly in the statement, "A man is considered a fighter whether he carries a gun or pays taxes to help kill us" (Yusufzai, 1999).

Hamas has made arguments supporting their use of children in war and of suicide attacks in various actions against Israel, modes of attack that are rare if not quite unprecedented in Islamic history. Their statements have made clear their opinion that their war with Israel is asymmetric in terms of equipment, numbers, capability, and other forms of military consideration. They believe the extreme nature of their being overmatched militarily justifies certain extreme and desperate measures. They also have made statements to the effect that they would recognize the rights of Jews to remain who resided in Palestine prior to the declaration of the state of Israel. The Israeli people are seen as invaders and, Hamas has stated, "It is our right as an occupied people to defend ourselves from the occupation by all means possible including suicide attacks;" their representative went on to say, "Jews have no right in it [ed: Palestine], with the exception of those who lived on the land of Palestine before World War I" ("Hamas in their own words").

I want to highlight in these arguments that these extremist groups all either implicitly or explicitly recognize that the normal restrictions on conduct have been suspended or superseded but not removed. These arguments serve to demonstrate that at least on the communal level these groups still recognize the traditional limits placed by the early Islamic sources on conduct of warfare. However, while recognizing those limits they argue that their specific situations are exceptions justified within a tradition that has long made allowances in its jurisprudence for practical necessity excusing otherwise forbidden acts. These are by no means an exhaustive sample of the arguments and reasoning made by extremist groups; however, each one exhibits attention to a certain traditional rule constraining Islamic warfare.

In the case of the statements from Al-Qaradawi and Osama Bin Laden, there is a clear attempt to work around the rules marking non-combatants as off-limits for intentional attack. Both statements make an argument not that attacking innocent civilians is permissible in Islam, but that the victims in question did not in fact qualify for that status. Bin Laden utilizes a common historical interpretation among the scholars that merchants and others who directly and materially support the military with arms or supplies are legitimate targets. Al-Qaradawi makes the argument that the *future* status of the victims as combatant is a virtual surety, and so it is not civilians who are killed but military recruits intended for the battlefield. In both cases, there is an attempt to overlay traditional exceptions onto modern situations. Through a tactic common in Islamic jurisprudence, an analogy is made that the modern situation is enough like these historical traditions to be a valid guide.

The cited statements by Hamas justifying its military efforts combine a direct appeal to Qu'ranic justification with an argument about military necessity. The Qu'ran states that those who drive others from their homes unjustly will suffer the worst punishments in the afterlife (2:85), and fighting in order to expel people from land from which Muslims have been driven (2:191) is one of the few justifications for war explicitly stated in the Qu'ran. The lopsided military capabilities of Hamas when compared to the modern and well-trained Israeli military pose a problem for traditional military tactics. Military necessity has long been considered a valid reason for exceeding the traditional limits in extreme cases. For example, many of the rulings about siege weaponry (which was difficult to aim accurately and incredibly indiscriminate in the damage inflicted) and attacking fortifications in the midst of a civilian population are based on the criteria of military necessity as determined by the commander in the field.

Hamas and the scholars who support their operations in Palestine and Israel prefer the term "martyrdom operation" to "suicide bombing" for a very specific reason. Suicide has always been absolutely forbidden in Islam by the majority of mainstream scholars since the very beginnings of the tradition. However, there are numerous stories of martyrs who went into battle against overwhelming odds that might be rightfully called "suicidal" and died fighting for their cause. In fact, in the rich history of Islamic poetry and scholarship this sort of martyr figure is often revered. Hamas draws a direct connection between the suicide bombers of today and these narrative figures attempting to claim that they are identical. They claim that in both cases a fighter is making a valiant strike against the enemy even though they are doomed to failure because it will have some military value.<sup>6</sup>

Whether their actions could be attributed to the governmental or military structure of a certain nation, the overwhelming inferiority of the terrorists' military capabilities, or the feeling that armed violence is an act of self-defense against those who have stolen homes,

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6 Of course, the strengths of this claim are debatable. Bernard Freamon (2003) in the *Fordham International Law Journal* makes a compelling case that this understanding of modern day suicide bomb operations is weakly supported, if at all, by the traditional sources. Rather, that the modern conception put forward by Hamas and their apologists is based on a Shi'a re-imagining of the martyrdom concept during the 1960's and 1970's, a full discussion of which leaves the current scope of this paper. The reference is made primarily to demonstrate that it is a matter, which is problematic, at best, among scholars of Islamic history.

the actions of these groups have been defended using the argument that extraordinary circumstances call for extraordinary measures. The justifications used by these organizations appeal to principles of independent reasoning, military realism, and textual interpretation that are foundational to Islamic jurisprudence. By arguing in such a fashion and from such sources, terrorists cede the concept that there are identifiable and reasonable limits to what one is allowed to do in the pursuit of Islamic warfare. It is a tendency, at least in the opinion of the majority of modern scholars within the Islamic tradition, that many of these arguments are weak reasoning and spring from minority or otherwise questionable traditions. At the least, it is clear that valid and historically supported alternative arguments exist which would much more tightly constrain the behavior of the Muslim who would consider himself a *mujahid*, one who wages jihad for God's path.

The sources and tradition of a rich Just War Theory are present in Islamic jurisprudence from the earliest days of the religious community, though their history is strewn with vigorous debate. The violence committed by certain fundamentalist, transnational, Islamic organizations does not refute the presence of an ethical standard of just war in Islamic theology. Rather, the nature of the justifications they present reaffirms it. The justifications used in the commission of these acts are based on a long tradition of Shari'a reasoning and use arguments drawn from the historical example of the Prophet Muhammad and other revered figures of Islamic antiquity, which are part of an Islamic dialog which is both uniquely modern and also connected to the roots of Islamic history. If we are to combat these dangerous ideologies within the modern Muslim discourse, we must be prepared to do so using the same methods and sources, engaging "on the enemy's ground," so to speak, and further educate people about the wide and diverse range of Islamic belief and behavior that is available.

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