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On: 18 October 2013, At: 02:09

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Studies in Conflict & Terrorism

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/uter20>

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Published online: 18 Apr 2013.

To cite this article: Paul Kamolnick (2013) Al Qaeda's Sharia Crisis: Sayyid Imam and the Jurisprudence of Lawful Military Jihad , Studies in Conflict & Terrorism, 36:5, 394-418, DOI: [10.1080/1057610X.2013.775478](http://dx.doi.org/10.1080/1057610X.2013.775478)

To link to this article: <http://dx.doi.org/10.1080/1057610X.2013.775478>

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Al Qaeda's *Sharia* Crisis: Sayyid Imam and the Jurisprudence of Lawful Military *Jihad*

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Militant Islamist Sayyid Imam's legal critique of Al Qaeda's anti-U.S. mass casualty terrorism holds great potential utility for counterterrorist messaging strategy. In this article, a jihad–realist Islamist theological–jurisprudential methodology is first defended as the means most productive for delegitimizing Al Qaeda among high value, religiously motivated recruits. Second, Sayyid Imam's specific allegations and detailed Sharia proofs against Al Qaeda are presented. Finally, implications are drawn for U.S. counterterrorist messaging focusing especially on the utility of wielding this theological–juridical approach as compared to other “counternarrative” approaches, and the vital need to accurately characterize Islamism and its relation to terrorism.

Jihad is a duty, but if it shirks Shari'a guidelines it becomes unethical warfare.¹

Those who fear Allah do not scale walls like thieves to reach their objectives, betraying their Emir, taking their enemy in cold blood, and bringing calamities to the Muslims.²

In Islam, there is no such thing as “the end justifies the means,” even if the end is noble and legitimate to begin with. On the contrary, a Muslim worships Allah through the means used just as he worships Him through the ends sought.³

The 9/11 attacks were wrong and contradicted the Islamic Shari'a.⁴

Does Al Qaeda's waging of *jihad* using mass casualty terrorist attacks against non-combatant civilian targets violate the *Sharia*? Did 9/11 comply with the requisites for lawful *jihad*? A dispute bearing directly on these questions erupted in 2007–2008 pitting former Al Qaeda *Sharia* guide and Egyptian Islamic Jihad emir Dr. Sayyid Imam

Received 5 December 2011; accepted 20 November 2012.

This article substantially benefitted from the valuable constructive suggestions offered by an anonymous reviewer, and also the Editor-in-Chief's patient willfulness shepherding this final revision to completion. To each thank you, and it goes without saying that any remaining errors or defects are my own.

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Bin-Abd-al-Aziz Al-Sharif (aka: Dr. Fadl; hereafter, Sayyid Imam) against Al Qaeda's present emir and also former emir of Egyptian Islamic Jihad, Dr. Ayman al-Zawahiri. Three publications lie at its heart.⁵

Should grave violations of the *Sharia* be proven, and Al Qaeda is not deemed a bona fide *Sharia*-compliant *Salafi-jihadi* organization, Al Qaeda's Islamist legitimacy is imperiled. U.S. counterterrorism strategies whose objective is to disrupt, dismantle, and defeat Al Qaeda-based and -inspired terrorism,⁶ may then leverage this endangered Islamist legitimacy to further exacerbate processes of fractionalization, implosion, and marginalization presently propelling along with other dynamics, Al Qaeda's demise.

Initially garnering noteworthy coverage and a brief round of analysis and commentary,⁷ Sayyid Imam's comprehensive critique is presently neither fully recognized nor sufficiently integrated into U.S. government counterterrorist messaging.

Sayyid Imam (b. 1950) is presently serving a life sentence in Al-Turrah Prison in Cairo, Egypt based on his alleged association with terrorist activities.⁸ Known in militant Islamist circles as "Dr. Fadl" or "Shaykh Abd-al-Qadir Bin-Abd-al-Aziz," he was a major *Sharia* authority consulted for *jihad* operations and the author of two influential jurisprudential works: *The Faithful Guide to Preparation (al-Umda fi 'idat al-idda)*, a 500-page-plus work published in 1988 and *The Compendium in Pursuit of Divine Knowledge (al-Jami' fi talab al-'ilm al-sharif)*, an 1,100-page work released in 1993.

To militant Islamists he is a *jihadi* insider whose scholarly acumen and bona fides are virtually unassailable. Montasser Al-Zayyat, Islamist attorney, human rights activist, and expert on Egyptian Islamist movements, has said of Sayyid Imam that he was the Egyptian Jihad's "greatest intellectual" and that following "his decision to leave the group [Egyptian Islamic Jihad, c. 1992/1993], no member produced *shari'a* studies on [his] level."⁹ Hani al-Siba', a key Egyptian Jihad Islamist militant, has said that "[we] can be at odds with him, but eventually Sayyid Imam is the jihadists' theorist and intellectual."¹⁰ Usamah al-Siddiq, granted political asylum in Germany as a member of Egyptian Jihad, states that "[n]o one can utter a word after Sayyid Imam, not even Al-Zawahiri himself."¹⁰ Research on ideological influence confirms Sayyid Imam's status as one of the most influential living Al Qaeda-linked militant Islamists.¹¹ Finally, according to Khalil Al-Anani, Sayyid Imam's major "revisionist" work represents "the most significant moment in jihadi revisionism."¹²

This "revisionist" appellation is misleading and inaccurate as applied to Sayyid Imam's recent scholarship, however. He would certainly claim that he is *not* a revisionist in relation to upholding an Islamic monopoly on religious truth, striving by all means for Islamic supremacy and an Islamic state, the waging of the *jihad*,¹³ and the exclusive use of the *Sharia* sources and orthodox Sunni jurisprudence. It is not revisionism but rationalization that he demands: to "rationalize" present-day *jihad* and restore lawfulness to the struggle on Earth to raise the Word of Allah supreme.

This article's objective is threefold. First, to illustrate how Islamic jurisprudence functions to legitimize or delegitimize (for militant Islamists) the waging of the *jihad*. Second, to provide a faithful exposition of the main lines of Sayyid Imam's legal case against al-Zawahiri/Al Qaeda. Finally, to recommend that far greater emphasis be placed in counterterrorist messaging on the critical role the *Sharia* may hold in delegitimizing Al Qaeda among that sliver of recruits for whom *Sharia* compliance is essential. These "high value recruits" are essential if Al Qaeda is to forestall implosion, replenish its leadership, defend its legitimacy and religious bona fides in relation to other Islamist competitors, and sustain whatever connection may still exist between itself and a scholarly, *Sharia*-based *Salafist* universe.

The article proceeds as follows. Following a brief introduction to Islamic jurisprudence, and Sayyid Imam's chief allegation that Al Qaeda has produced a self-serving, deviant,

and lawless “killing in masse” doctrine, the detailed case against al-Zawahiri/Al Qaeda is presented. Naturally organized into two inter-related clusters, the first expounds Sayyid Imam’s detailed case supporting his allegation that al-Zawahiri/Al Qaeda violates ten specific legal requirements regulating the lawful waging of the *jihad*. Table 1 is designed to assist navigating his oftentimes intricate proofs. In the second, Sayyid Imam’s detailed case is expounded alleging that Al Qaeda/al-Zawahiri have imported four corrupted *Sharia*-violating principles designed to maximally expand the Al Qaeda killing fields. In conclusion I propose suggestions for enhancing U.S. counterterrorism messaging targeting high-value religious supporters (active, and passive) and other potential Al Qaeda recruits.

Sayyid Imam’s Case: The Al Qaeda Killing Fields

Islamic Jurisprudence (Usul Al-Fiqh)

Authority in Islamic jurisprudence (*Usul Al-Fiqh*) derives from one’s acknowledged expertise in commanding the sources and methods of the Divine law (*Sharia*). Prevailing in debates over points of law requires that one convincingly deduce appropriate judgments using correct legal principles, methods, and sources. Moreover, Al Qaeda claims to faithfully uphold the classical *Sharia* of lawful *jihad* by strictly adhering to the path of *al salaf al salih* (the path followed by the “righteous” predecessors). These earliest companions of and successors to Prophet Muhammad furnish for genuine *Salafists* the normative ideal of righteous intention and conduct, including the conduct of *jihad*. Al Qaeda also claims to strictly abide by an established body of law (*fiqh*) transmitted by classical religious scholar-jurists prescribing and regulating *jihad fi sabil Allah* (*jihad* in the path of Allah). The most damaging case against Al Qaeda arises when these *Sharia* sources are marshaled to persuasively demonstrate that absolutely forbidden (*haram*) violations have been perpetrated. Should Al Qaeda’s terroristic *modus operandi* evidence discontinuity, innovation, and forbidden acts contradicting Prophet Muhammad’s “*sunna*”—although marketed in Al Qaeda apologetics as *the Salafist-jihadi* path—its violation of the classical *jihad* would be proven, and its legitimacy impaled.

The Jurisprudence of the Lawful Military Jihad

The Doctrine of “Killing in Masse.” The violations examined below, collectively considered, confirm according to Sayyid Imam that Al Qaeda has forsaken the *legal* military *jihad* and is instead guilty of plotting and executing mass murder. Not mincing words, he describes Al Qaeda’s overall policy as “the doctrine of killing in masse.”¹⁴

Ten Specific Violations of the Sharia of Lawful Jihad. Whether it is a deviant doctrine justifying wholesale murder as Sayyid Imam charges, or *jihad fi sabil Allah* (striving/struggling in Allah’s path), must be determined by properly applying the *Sharia* to determine the legality of all those actions that facilitated mass casualty terrorist attacks, including 9/11. Sayyid Imam identifies ten defective legal opinions/principles that undergird Al Qaeda’s “killing in masse” doctrine.¹⁵ Each expands the range of permissible targets and methods, eventually legalizing the targeting of all who hinder Al Qaeda’s objective. Table 1 juxtaposes Sayyid Imam’s position with Al-Zawahiri/Al Qaeda across these ten targets/principles and organizes the discussion that follows.

#1: Unlawfully attacking the far enemy over the near enemy. According to Sayyid Imam, the classical sources and established Muslim law unambiguously assert that *jihad* must first be conducted against those infidel and threatening forces in nearest geographical

Table 1
Al Qaeda's ten violations of the *Sharia* of lawful *jihad* (according to Sayyid Imam)

Potential targets/Legal principles	Religious scholars	
	Sayyid Imam	Al-Zawahiri/Al Qaeda
(1) Far Enemy	No	Yes
(2) Nationality	No	Yes
(3) Civilian Tax-Payers	No	Yes
(4) Infidel Human Shields	No	Yes
(5) Muslim Human Shields	No	Yes
(6) Expansion of <i>Lex Talionis</i>	No	Yes
(7) Muslim Sub-Adults	No	Yes
(8) Treachery1	No	Yes
(9) Treachery2	No	Yes
(10) Infidel Tourists	No	Yes

proximity to one's own territory.¹⁶ Al Qaeda, however, has reversed this priority and made "[f]ighting the distant enemy (United States) . . . more important than fighting the nearby enemy."¹⁷

#2: *Unlawfully killing on the basis of nationality.* Sayyid Imam charges Al Qaeda with using the illicit category "nationality" as a basis for targeting. There is no basis in Islamic law, he asserts, for such a designation. "It is by no means permissible to kill a human being," he declares, "just because he belongs to a certain country (killing on nationality). This heterodoxy is without precedent in the heritage of the [Muslim] Nation."¹⁸

Moreover, he rejects as fundamentally flawed al-Zawahiri's assertion that "nationality is not just an identity" but rather is definitive "proof of affiliation, allegiance, and voluntary acceptance of falling under the jurisdiction and obeying the laws of the infidels."¹⁹ To the contrary, he states, "[a]ffiliation by an individual to a certain country is no proof of his Islam or kufr [infidelity], for the objective of affiliation to nations and similar affiliations is just identification."²⁰

Bereft of legal cover, Al Qaeda shifted grounds to assert that it is not nationality but the West's war against Islam and the corruption of Western-imposed Arab regimes that justifies Al Qaeda attacks. Sayyid Imam, however, provides the following retort citing some rather inconvenient (for Al Qaeda) facts:

Al-Qa'ida and Bin Ladin announced more than once that they target US citizens without discrimination. This is what they did on 9/11. They killed on the basis of nationality. Groups that sympathized with them carried out the Madrid bombings in 2004, killing Spaniards indiscriminately. In the London Underground bombings in 2005, they killed British citizens on the basis of nationality. All this was killing on the basis of nationality. Being a citizen of a particular country is not proof of disbelief or faith. It is not evidence of declaring the lives of certain persons forfeit or that their property is forfeit.²¹

In the above, the permissibility of targeting various categories of civilians *per se* was not the main point of legal contention. In the three opinions that follow, this question is directly addressed.

#3: *Unlawfully killing civilian non-combatants because they pay taxes to an infidel state.* Sayyid Imam denies al-Zawahiri's assertion that a citizen or resident who "pays taxes to the kuffar" (infidels) is by having done so "engaging in combat with his money" and thereby forfeits immunity from being killed.²² Paying taxes, a portion of which supports military expenditures, proves neither one's fidelity nor infidelity (*kufr*). Taxes are compulsory for *all* residents and citizens as the primary means modern nation-states employ to finance expenditures, *including* Muslims and non-Muslims who strongly dissent from a nation's foreign and military policies. Further, distinctions no longer exist in modern nation states by which Muslims and non-Muslims can be identified and despite migration of Muslims to many other lands "[a] Muslim becomes inviolable by virtue of his Islam, wherever he goes. . . ." ²³

Third, if true, hundreds of millions of Muslim's lives are forfeit who reside in India, Russia, Europe, and the United States, since wars have been launched in Kashmir, Chechnya, and elsewhere and in each case "they [Muslims] pay taxes to their government which fights the Muslims."²⁴

#4: *Unlawfully killing infidel human shields* (Kafir tirs). Sayyid Imam accuses Al Qaeda of misusing and misapplying the doctrine of *kafir tirs* in order to justify the terrorist slaughter of civilians. Islam does indeed permit "the killing of a *kafir tirs* [infidel human shields, or civilians]," but *not* as an illegal means for "killing of civilians in the countries of kufr [infidelity]."²⁵ Under specific circumstances, the *unintentional* killing of infidel women and children, lives otherwise inviolable, is permissible in Islam. Indeed, according to Peters' authoritative text, the classical sources corroborate Sayyid Imam's position that although the "intentional killing of women and children is forbidden," Prophet Muhammad's offensive raids on occasion employed weapons and tactics (e.g., catapult, stealth attack, and night-time raids), that led to the unintentional killing of infidel women and children.²⁶

However, Sayyid Imam charges that Al Qaeda's use of mass casualty terrorist methods directed *intentionally* at the mass killing of civilian non-combatants in civilian institutions has nothing to do with the above examples derived from the Prophet's *Sunna*.

[E]ven if we assume he is certain that the civilians among them are kuffar, killing those civilians in civilian aircraft and trains and in buildings and hotels is not the legitimate form sanctioning the killing of an unbeliever human shield. This is because these installations are not military installations in which kuffar civilians are killed in the process, as permitted under *tatarrus*. *These are civilian installations and their bombing means deliberate and direct killing of civilians. This has nothing to do with tatarrus. It is not permissible to kill those deliberately.* (emphasis added)²⁷

#5: *Unlawfully killing Muslim human shields.* Is it permissible to kill Muslim "human shields"? The prohibition against killing Muslim human shields is far stricter than that applicable to infidels. The classical legal doctrine known as *Al-Tatarrus* codifies the rules under which it is legally permissible in war to kill Muslims—an act otherwise regarded as a sin second only to apostasy²⁸—who having been placed by one's declared enemy at the head of battle columns and enemy formations, functions as a "human shield" to dissuade Muslim defenders religiously prohibited from shedding innocent blood.²⁹

Sayyid Imam charges that again Al Qaeda grossly perverts and misapplies the *Al-Tatarrus* doctrine. "Allowing the killing of a Muslim tirs [shield]," he declares, "and consequently the permissibility of killing Muslims who mix with the kuffar [infidels]" is a grave breach of the *Sharia* for the following reasons.³⁰ First, the killing of a Muslim

human shield is not addressed in *Qur'an* or *Hadith*, and is based on independent theological/jurisprudential reasoning (*ijtihad*). *Ijtihad* is wholly circumscribed by the jurisprudential general rule, however, upholding the primacy of specific, explicit unequivocal prescriptions/proscriptions except under conditions of absolute necessity.³¹ Second, theologians who sanctioned the killing of a Muslim did so only in cases of dire emergency in which Muslims were fighting a *defensive jihad*; there is no precedent in classical *Sharia* for the doctrine of necessity being applied to an offensive *jihad* since "they are an offensive operation (*jihad al-talab*), which Muslims can leave aside or postpone without harm."³²

Because, citing *hadith* in *Sahih Muslim* (i.e., Book 31, #6219), "the blood, money, and honor of every Muslim is forbidden to every other Muslim,"³³ it is only in a defensive *jihad* (*jihad al-daf*) and only under circumstances of dire emergency, that such can be voided. Fourth, Sayyid Imam demonstrates a profound dissimilarity between the classical treatment of the Muslim human shield and Al Qaeda's murder of Muslims. The classical circumstance was one of absolute necessity to prevent catastrophic losses, and then only in recognition of the rule "commit the least of two damaging things."³⁴ This "total and definite necessity" starkly contrasts with Al Qaeda's decision to launch offensive operations in the nations of *kuffar* even though the classical doctrine would judge that "it is not permissible to go ahead with such operations because of the possibility of killing Muslims who are mixing with them." Not under siege by an invading army, Muslims in infidel lands "are not with an army in a war" and "are not captives they hold but citizens like them [*kuffar*] or residents in their countries." These individuals are "killed abruptly and without prior warning by the attackers," and not as a last resort in a war to avoid catastrophic losses to a defined Muslim territory and polity.³⁵

#6: *Unlawful killing on the basis of the unlawful extension of the principle of "treatment in kind"* (*lex talionis*). Sayyid Imam alleges that to justify a policy of "killing without discrimination," Al Qaeda has massively distorted, and subverted, the *Sharia* rulings on the principle of reciprocity ("treatment in kind").³⁶

The key question in dispute is this: Is a general rule, such as the right to repel aggression in kind (a specific application of *lex talionis*), super-ordinate or subordinate to a more specific, detailed rule or prohibition, for example, "the killing of infidels whose killing is not permissible." Several sources are cited as evidence to support Sayyid Imam's allegation that al-Zawahiri's rendering of the "treatment in kind" principle violates the *Sharia*. First, al-Zawahiri several times presents an opportunistically truncated version of the key Qur'anic verse (2:194), which *should* read in full, "If then any one transgresses the prohibition against you, transgress ye likewise against him. But fear Allah and know that Allah is with those who restrain themselves." Al-Zawahiri in his key chapter ten discussion of *lex talionis*, however repeatedly omits from citation and discussion the second clause (i.e., "But fear Allah and know that Allah is with those who restrain themselves").³⁷

Second, and most damning, by subverting the *Sharia* principle granting primacy to explicit particular prohibitions, al-Zawahiri has rendered permissible certain *Sharia*-violating acts. For example, the killing of infidel women, children, employees, peasants, monks, and others otherwise protected, is licensed. So, despite the general rule permitting "repelling aggression in kind," the specific rule "forbidding the killing of infidels whose killing is not permissible," should not permit "Muslims . . . to kill their [infidel] women and children."

Several *Sharia* sources are cited to support the above allegation. In *Qur'an* 28:15–16 Moses's repentance and begging for forgiveness for having killed an adversary, despite its justice under a principle of reciprocity, is recalled. *Sahih-Muslim*, #7234 is cited, in support of this verse, as recalling the words of the second caliph Umar to have said: "'Moses peace on him mistakenly killed one person from the people of the Pharaoh.'" From *Sahih-Bukhari*

we learn of the unwillingness of Muslims to kill a boy child in revenge for their dead during the battle of Badr, because of its violation of the *Sharia* pertaining to those whose blood is forfeit; and also during the battle of Uhud, the unwillingness to kill infidel women despite the slaying of a high-ranking Muslim female (the latter, in *Sahih-Bukhari*, #4043). In each case, then, “a specific rule is given precedence over the generality of retaliation in kind”³⁸

Finally, al-Zawahiri is shown to contradict the rulings of the seminal *Sharia* scholars al-Shafi’i and al-Shaybani. Al-Shafi’i prohibited the killing of women, children, and monks under the rule that “forbidding their killing is a specific stipulation that has precedence over the rule of treatment in kind.”³⁹ And Shaybani is quoted directly: “. . . even though they may be treacherous we are not allowed to be treacherous with them, so that if they kill our hostages we are not allowed to kill their hostages.”⁴⁰

#7: *Unlawful recruitment and killing of Muslim sub-adults engaged in offensive jihad without parental permission.* In a legitimately declared defensive *jihad* against the invasion of a Muslim land and polity, *jihad* is *fard ‘ayn*—an obligation that devolves on each individual capable of fighting, including, females, slaves, and sub-adults. In an offensive *jihad*, however, *jihad* is *fard kifayah*—collectively discharged by a sub-set of the community, typically male, able-bodied, non-indebted adults, who fight on its behalf to spread the Word and worship of Allah. In an offensive *jihad*, minors and those who do not receive parental permission to fight, are exempted.⁴¹

It is evident from a number of independent sources, however, that Al Qaeda conceived and legally justified 9/11 as an offensive *jihad*. Consider the following. The mastermind and chief architect of 9/11, Khaled Sheikh Muhammad (KSM), while invoking the principle of retaliation, also explicitly acknowledges *Sharia* violations involved in that mass casualty terror attack that implicitly presume an offensive and not defensive act had been perpetrated.⁴² The offensive nature of the 9/11 attack is even more evident when bin Laden attempts to clarify why an attack was launched from within a sovereign territory thus violating his oath of obedience to Mullah Omar who at the time was the Emir.

Following the latest explosions [9/11] in the United States some Americans are pointing the finger at me, but I deny that because I have not done it. The United States has always accused me of these incidents which have been caused by its enemies. Reiterating once again, I say that I have not done it, and the perpetrators have carried this out because of their own interest. *I am residing in the Islamic Emirate of Afghanistan, and I have held talks with His Eminence Amir ol-Momenin [Taleban leader Mola Mohammad Omar Mojahed [sic]], who does not allow such acts to be carried out from Afghanistan territory.* (emphasis added)⁴³

Finally, in the first communiqué openly admitting responsibility for 9/11, it is the unequivocally offensive command to attack the People of the Book revealed in the penultimate 9th *surah* (*Qur’an* 9:29): “Fight those among the People of the Book who do not believe in Allah and the Last Day, do not forbid what Allah and his Apostle have forbidden, and do not profess the true religion, till they pay the poll-tax out of hand and submissively”—along with an unambiguously offensive *hadith* citation—“I have come to you in order to slaughter you”—that is publicized by Al Qaeda.⁴⁴

Having proved the offensive nature of the 9/11 terrorist attack, al-Zawahiri has no choice but to concede what was never in dispute, that is, that parental permission is required

for an offensive *jihad*, and therefore using these illicit agents is in violation of the *Sharia* regulating the lawful *jihad*.

#8: *Unlawful killing of infidels using treachery*. Did the 9/11 hijackers residing in or granted safe passage into the United States commit treachery? Is treachery forbidden (*haram*) against a nation-state that had explicitly (or implicitly) protected one's personal security, honor, and property? Sayyid Imam is unequivocal: "It is inadmissible for a Muslim to betray the trust of the people of the country in their blood, honor, or funds, or act treacherously against them in the name of *jihad*. . . . [T]he 9/11 attacks were wrong and contradicted the Islamic shari'a."⁴⁵

The unlawfulness of treachery and the fact that it is a "cardinal sin"⁴⁶ is based in the following proofs. First, the application of the comparative jurisprudential principle *takhrij al-munat* (i.e., "deducing the basic theological rule which applies to the new phenomenon" [a *visa*]) proves unequivocally that "a *visa* is without doubt a contract of safety, even if they [the Americans] did not spell this out explicitly or in the *visa* stamp on the passport."⁴⁷ Second, al-Zawahiri's principal contemporary source justifying the 9/11 attack, Shaykh Nasir Al-Fahd, himself claims that "a *visa* constitutes a safety pledge" and therefore al-Zawahiri not only violates this ruling, but is shown to have opportunistically cherry-picked only those rulings from this Shaykh that appear to justify his "killing in masse" doctrine.⁴⁸ Third, there is unanimity (*ijma*) among the great classical jurists and across the four key *sunni* schools—Hanafi, Shafi'i, Maliki, and Hanbali—that treachery constitutes a grave violation of the *Sharia* and is *haram*.⁴⁹

Fourth, the *Qur'an* emphatically asserts the duty to uphold pledges and promises made, regardless of whether one is interacting with a Muslim or infidel. "Fulfil the Covenant of Allah when ye have entered into it, and break not your oaths after ye have confirmed them: Indeed ye have made Allah your surety; for Allah Knoweth all that ye do" (*Qur'an* 16:91); "O ye who believe! Fulfil (all) obligations" (*Qur'an* 5:1); ". . . It is your duty to help them [those who have left their and homes as emigrants for the new Muslim faith], except against a people with whom ye have a treaty of mutual alliance. And (remember) Allah seeth all that you do" (*Qur'an* 8:72).⁵⁰ Fifth, several agreed-on *ahadith* confirm that treachery is an egregious sin, and like the *Qur'an*, regard honor in the keeping of pledges as what distinguishes the righteous believer and upholder of Allah's laws from sinners to be judged on the Last Day.⁵¹ Sixth, the specific religious proscriptions against betrayal and treachery supersede the general principle of "treatment in kind" since, "[A]ggression and treachery are not among the cases where treatment in kind is permissible. Actually these explicit texts forbid such undertakings. Among the aggression that is forbidden in dealing with the enemies is killing those among them whose killing is not permitted, betrayal, breaking of covenants, and destroying urbanization for other than the necessity of *jihad*. . . . [T]he rule in treating the people of war is treatment in kind, except in acts not allowed by shar'i."⁵²

Finally, Sayyid Imam rules out al-Zawahiri's claim that this matter is unsettled law and therefore subject to *ijtihad*. It was Al-Shafi' himself who testified to *ijma* (consensus) among the scholars having "stated more than 1200 hundred years ago ' . . . we do not know of anything recounted contrary to this' (Al Umm, 4/88)."⁵³

#9: *Unlawful killing on basis of unlawful breaching of safety contract*. Al-Zawahiri contends that even if one concedes that treachery is *haram*, the contract of safety (*aman*) can be voided on two other grounds: the right to deceive in warfare, and because the United States violated its pledge with the Muslims. Sayyid Imam alleges, however, that these two grounds do not permit the voiding of *aman* granted to non-Muslims. First, although there are authentic *ahadith* confirming the right to deceive in warfare,⁵⁴ there is no evidence in *Qur'an*, *Hadith*, or *fiqh*, permitting treachery in war. Al-Zawahiri is charged with being

factually incorrect in his rendering of a key *hadith* that, in its proper reading, does *not* sanction deceptively attacking one with whom one has an existing pledge of security or alliance.⁵⁵ Second, the agreed *hadith* quoting Prophet Muhammad as stating that “War is deceit” does not apply to those with whom one has an existing pledge: while it is permissible to deceive the unbelievers in war, “however this is possible,” the exception involves “breaking a pledge or a safety promise, something which is not permissible.”⁵⁶ Third, al-Zawahiri fails to apply the correct legal rule to the case under consideration: the case of the 9/11 hijackers is not governed by the rules for “an unbeliever given safety in the House of Islam” but rather “A Muslim given safety in the House of Unbelief.” “There are differences between the two situations that are detailed in theology books,” Sayyid Imam states and then declares, “Ponder how they confuse and mix matters! Nay, ponder their ignorance!”⁵⁷

Al-Zawahiri’s assertion that *aman* may be transgressed because the United States violated its pledge with Muslims suffers, according to Sayyid Imam, two grave defects. First, authentic *Qur’an*, authentic *ahadith*, *fiqh*, and *ijma* confirm that Prophet Muhammad neither transgressed nor sanctioned the transgression of pledges even if the unbelievers themselves had done so: “[A] pledge by a Muslim with the unbelievers (including the safety pledge implicit in a visa) is a personal contract he has with them and it is not abrogated by aggression by the unbelievers other than him.”⁵⁸ Second, Sayyid Imam condemns al-Zawahiri actually of heresy by relying on Nasir Al-Fahd’s “juristic identity” theory that, in opposition to a range of vital proofs, obliterates the distinction between state and people, and between persons, and treats them as a unity equally culpable, and equally deserving to be killed.⁵⁹

#10: *Unlawful killing or abduction of infidel tourists granted safety contract (aman) traveling in Muslim lands.* Sayyid Imam contends that non-Muslims granted rights of entry to Muslim countries are immune under *Sharia* from any acts that endanger their lives, liberty, or money. For that reason, in opposition to al-Zawahiri/Al Qaeda sanctioning of these *Sharia* violations, he states that “[a]ggression on the money and lives of the ma’sumin [those infidels granted protection in Muslim lands] is a major sin. . . . [T]hose who commit it would have done something they are not allowed to do. . . . [W]e tell all Muslims to desist from them, for the sinful acts of burglary and abductions and other forbidden acts cannot be sanctioned under the pretext of financing jihad.”⁶⁰ Six proscriptions are cited, and four additional grounds offered.⁶¹

“These . . . six proscriptions,” Sayyid Imam concludes, “each of which is sufficient on its own to spare foreigners and tourists and not confront them with harm or damage. So how can the situation be,” he continues, “when all these proscriptions are combined.”⁶² Four others are briefly adduced—that everything considered a pledge to an unbeliever be regarded as one; that the punishment for an infidel’s sins in a Muslim land are nothing compared to the sin of infidelity itself, and neither requires punishment and certainly disallows death as punishment; no one but Allah is in a position to judge the true intentions and righteousness of one’s soul, whether a Muslim or non-Muslim; and finally, during the Muslim wars of conquest great care was exercised to restrict killing to those deemed absolutely necessary, but with due regard for the prohibitions against unlawful shedding of blood.⁶³

The Four Corrupt Pillars of Al Qaeda’s “Killing in Masse” Doctrine

Sayyid Imam alleges that “to kill the largest number of Americans outside and inside their country” required that Al Qaeda produce “a package of corrupt theories and principles” that simultaneously furnishes both “the pillars of their [‘killing in masse’] doctrine” as

Table 2
The four corrupt pillars of Al Qaeda's "killing in masse" doctrine

Potential Targets/Legal Principles	Religious Scholars	
	Sayyid Imam	Al-Zawahiri/AQ
(A) Responsibility for Muslim World	[1] Islam, and Others	USA/Israel Only
(B) Mobilizing Largest Number Supporters	[2] Specific Fatwas	General Fatwas
	[1] Multiple options	Single option
(C) Emir's Authority	[2] Conditions, restrict.	Unconditional, unrestrict.
	Indivisible Sovereignty	Divisible Sovereignty; "Locality of the Emirate"
(D) Scholarly Authority	[1] Any qualified scholar	Only "jihad" shaykhs
	[2] All legit. Criticism	critics = enemy
	[3] All legit. Criticism	crit. = Crusader

well as its retrospective justification through the device of "*fiqh al tabir* [jurisprudence of justification]."⁶⁴

Table 2 summarizes these four "corrupt pillars" Sayyid Imam alleges against Al Qaeda's "killing in masse" doctrine. They are: (1) placing exclusive blame on the United States and Israel for every calamity ever visited on the Islamic world; (2) placing exclusive focus on unrestricted violent jihad as the only means for promoting and raising Allah's Word; (3) innovating a new doctrine—"the locality of the Emirate"—that denies the sovereignty of an Emir in external relations such as foreign and military policy; and (4) restricting the right of scholarly endeavor to only those *shaykhs* who approve of Al Qaeda's "killing in masse" doctrine. Each is considered in turn.

Corrupt Pillar #1: Muslim versus Exclusive U.S.–Israeli Responsibility for the Present State of the Muslim World and Umma.

Muslim responsibility in Islam. Sayyid Imam alleges that Osama bin Laden and Khaled Sheikh Muhammad (KSM) for purely personal and not *Sharia*-based motives attacked the United States. Preparing the ground through systematic propaganda to mobilize the largest number of supporters, "the issue of fighting the United States" had to be transformed "from [being] a personal matter [of bin Laden and KSM] to an issue that concerns the entire Nation." Al Qaeda therefore systematically propagated "the corrupt idea that the United States was the cause of all the misfortunes of the Muslims" and also opportunistically brought in the Jews since "the Palestine issue has more allure for the masses, even though he [bin Laden] did not offer anything for Palestine."⁶⁵ Sayyid Imam alleges in direct contrast, that "the misfortunes of the Muslims are from within them, not because of the United States. . . . [T]hose who say that misfortunes of the Muslims are because of the United States are refuted by the Book and the Prophet's Sunna"⁶⁶ (emphasis added).

Soliciting general-inspecific versus authorized-specific fatwas for Al Qaeda's actions. Sayyid Imam alleges that instead of receiving beforehand a very specific *fatwa* confirming the Islamic proofs for the legality of the 9/11 attack, Al Qaeda is guilty of opportunistically

brandishing general, inspecific, all-purpose anti-American *fatwas* sought by bin Laden and al-Zawahiri well before 9/11.⁶⁷ This was done, Sayyid Imam charges, so that it would appear “as if they [*Sharia* scholars] had in effect consented in advance to what he [bin Laden] did through the previous general *fatwas*.” “Actually,” Sayyid Imam continues, “he [bin Laden] did not even consult his Emir, Mullah Muhammad Umar, and did not consult his [own] Shari’a Committee. He hoodwinked all of them and did it behind their backs.”⁶⁸

Corrupt Pillar #2: Multiple Options versus Single Options Available for Defending Muslim Life, Honor, and Property, and Lifting Allah’s Word. Sayyid Imam alleges that to maximize the violence demanded by its terrorist campaign, Al Qaeda had to delegitimize *any* measures other than armed clashes for securing the interests of the *umma*. Sayyid Imam rejects this on legal grounds, however, since according to him Muslims have “multiple options through which he can [lawfully] deal with his enemies according to his capabilities and circumstances,” and there are “conditions for jihad as well as proscriptions, and requirements needed for success.”⁶⁹ The following proofs are offered within the five inter-related topics anchoring this complex, multistage argument.

First, the existence and strength of the Muslims is a vital interest for which the *Sharia* is a chief means. Given this critical end in mind, and also the recognition that fighting until Allah’s word is supreme is a religious prescription,⁷⁰ key variables must be factored in to ensure vital interests are not sacrificed. For example, one must carefully assess the probabilities of success using violent means, relative to other methods (to be considered in greater detail later).

The evidence for this is plentiful and includes the following: the admissibility of concealing faith or opting for self-exclusion (e.g., a cave);⁷¹ that during a period of infirmity before Prophet Muhammad’s migration (*hijra*, or *Hegira*, c. 622 A.D.) to Medina, and his continued need for cooperation with the idol-worshipping polytheistic Arabian bedouin (*mushrikin*), he sanctioned postponement of three duties—that is, *al-wala* (loyalty devoted to Muslims only), *al-barra* (disavowal of all non-Muslims, including their actions and kin), and the physical punishing of sin;⁷² that despite the offensive *jihad* imperative having been revealed, Prophet Muhammad “did not make it a duty on the weak unable to migrate from Mecca in order not to imperil their lives. He did not make it a duty either on the migrants to Ethiopia who did not return from it until the year of Khaibar’s Conquest (seventh year *Hegira*) [c. 629]. *Jihad* in these two cases would not have brought benefit but would have caused damage to them, so it was waived in their case”;⁷³ and lastly, that while *jihad* was obligatory in order to protect the weak and oppressed (citing the *Qur’an* 4:75), the weak themselves were excused, for Sayyid Imam states quoting *Qur’an* 4:98–99: “‘Except those who are (really) weak and oppressed—men, women and children who have no means in their power, nor (a guide post) to direct their way. For these there is hope that Allah will forgive; for Allah doth blot out (sins) and forgive again and again.’”⁷⁴

Second, one must understand the intrinsic relation between absolute duty and the duty incumbent on specific persons at specific times. An individual’s obligation (*taklif*) to fulfill a general duty (e.g., any prescribed duty, including *jihad fi sabil Allah*) is conditional. It applies only after the *Qur’an* (Allah’s Word) has been revealed through Prophet Muhammad, and only for those who are of age, sound mind, and in a wakeful state.⁷⁵ And more generally, it is derived from Allah’s recognition (in *Qur’an* 2:286) of the frailty of human powers in relation to duties: “‘On no soul doth Allah place a burden greater than it can bear.’”⁷⁶

Third, it is vital to understand the relation between the absolute duty and specific conditions circumscribing the *jihad*. Several mitigating circumstances must be taken into account

before launching armed actions, among them: the weakness or relative lack of capacity of Muslims is a sufficient reason for not launching *jihad*;⁷⁷ that the more recent experiences of Islamic groups confirm the disastrous consequences of prematurely launching armed actions on the basis of ignorance or heedlessness;⁷⁸ finally, key works of jurisprudence demand, before launching of *jihad*, that all pieces of evidence, principles, restrictions, and mitigating circumstances be factored in.⁷⁹

Fourth, it is imperative as conditions for *jihad* that one take into account not just one's absolute duty, but especially one's relative capacity, power, and specific strategic environment. This critical point is possibly one of the most relevant to the case at hand. Sayyid Imam's general point is clear.

[F]or the Muslim to place an objective for himself that is beyond his capacity and not suitable to his conditions, even if it is legitimate in itself, and then follow any road to attain his objective, without being bound by the restrictions of Shari'a, then would have given precedence to his quest from himself over his God's quest from him. This is not the way of the Muslims but the way of the revolutionary secularists. In Islam, there is no such thing as 'the end justifies the means', even if the end is noble and legitimate to begin with. On the contrary, a Muslim worships Allah through the means used just as he worships Him through the ends sought. If he dies before getting his end, he gets the reward for trying, and he is absolved from the sin of what he could not do.⁸⁰

This also applies to the fiscal resources needed to wage *jihad*. Sayyid Imam is adamant that these resources must be sufficient, and that it is impermissible to violate the *Sharia* as a means of attaining them. "Jihad is not a duty on those who do not have the resources," he states, "even though it is *farḍ ayn* [duty on every individual Muslim]."⁸¹ Moreover, it is impermissible to violate the *Sharia* in order to acquire these funds. "It is regrettable to see that some of those (for whom jihad has been waived because they do not have the expenses required)," Sayyid Imam decries, "imposing on themselves a duty Allah has waived for them, and then resort to forbidden routes [i.e., abducting innocent hostages for ransom, robbery of those *ma'sumim* with whom a safety contract exists] to collect money on the grounds of preparing for jihad."⁸² This prohibition against violating the *Sharia* to fulfill a duty is well corroborated by multiple sources.⁸³

Fifth, observant Muslims seeking to elevate the Word of Allah throughout the Earth and secure the lives, power, honor, and property of the Muslims, possess a broad range of permissible options that includes but is certainly irreducible to armed clashes. A comprehensive spectrum from militant clashes to armistices is possible.

Which specifically is most likely in a given circumstance to more likely secure Muslim life, honor, and property, and extend Muslim sovereignty, requires not dogmatic inflexibility but *Sharia*-based prudential reasoning based in a concrete understanding of one's capacities. These capacities for *jihad*, as Sayyid Imam states, "is not confined only to what relates to the Muslim person himself, such as physical and material capability, but goes beyond this to encompass the actual circumstances surrounding him, including [the number of] proponents and opponents." What one is to do concretely, then, will vary based on these variables "with one possibly waging jihad, another secluding himself, and another hiding his religion."⁸⁴

Sayyid Imam also offers more detailed consideration of a range of contemporary options presently exercising the minds of those seeking immediate and expansive armed clashes as the singular path forward to elevate Allah's Word. Some examples follow. While

it is incumbent when possessing capabilities, knowledge, and circumstances that *jihad* be launched in various Muslim-majority societies not strictly upholding *Sharia*, “[n]either changing by hand nor clashing is an easy shar’i option, so they are not a duty. What is a duty is to advocate through persuasion. If the Muslim is unable to do so, patience is the option and the reward.”⁸⁵

He further recognizes that to effectively uphold virtue and punish vice, the State’s legitimate monopoly of violence is also required, and short of an alternative Muslim state with that sufficient capacity, clashing with an existing state is at least imprudent if not illicit.⁸⁶ Several other options with accompanying detailed proofs are offered, for example: avoiding imprudent military clashes,⁸⁷ lightening the burden placed on those charged with fighting the *jihad*,⁸⁸ the permissibility of strategic retreats under conditions of definite military inferiority,⁸⁹ the permissibility of tentative truces (*sulh*) and if beneficial to the Muslims, more extended armistices/treaties (*hudnah*),⁹⁰ the permissibility of tolerating apostates,⁹¹ the options available to Muslims in an infidel land,⁹² and finally, options available to Muslims whose land has been invaded by infidels. Given the contemporary significance of this latter circumstance [i.e., invasion by infidels], Sayyid Imam clarifies these options in some detail. First restating the binding religious prescription that “jihad against the enemy is an individual duty [*fard ayn*],” he then summarizes the various courses of action available.

If Muslims [in the invaded society] are unable to take on jihad, it becomes the duty of neighboring Muslim countries, if they are capable of conducting jihad. In case they are incapable, Muslims are duty bound to leave the country. . . . Whoever is incapable of jihad or emigration, may stay in the country and make a truce with the enemy without committing sins or harming other Muslims. In short, the options are either take on jihad, emigrate, or conclude a truce.⁹³

Corrupt Pillar #3: Indivisible versus Divisible Sovereignty of the Emir. Sayyid Imam alleges that the *Sharia* obligates obedience—once a voluntary oath of unconditional allegiance (*bay’at*) has been granted to and accepted by one’s emir (literally Prince, but in practice the dominant ruling figure to whom one is politically subordinate in a given territory). Yet, in direct violation of recognized rules regulating this binding covenant between ruler and ruled, Al Qaeda:

declared war on the United States from . . . [his] territory, against the will of his Emir and the fact that he [Mullah Omar] was against this . . . [and] . . . continue[d] with his [bin Laden’s] blueprint without any concern for the host State (Taliban). He neither thanked it nor respected the etiquette of hospitality or the allegiance he swore to his Emir whom he betrayed instead and stabbed in the back together with his State.⁹⁴

To legitimize such a breach, Sayyid Imam alleges that Al Qaeda had to corrupt the *Sharia* by innovating a doctrine circumscribing the legitimate sovereign authority of an emir. This “deviant doctrine” declaring the “locality of the Emirate,” logically entailed that Al Qaeda “owe[d] obedience to Mullah Omar [only] inside Afghanistan but not outside it.” Although “deviant” this was essential to Al Qaeda’s goal of conducting a mass casualty terrorist attack on the United States.

Sayyid Imam offers the following proofs confirming the indivisibility of an emir's political authority and the unconditional nature of *bay'at*.⁹⁵ First, *Qur'an* 4:59 implies the unity of the sovereign thus undermining any portioning of legitimate authority between internal and external affairs. It reads: "O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day." Second, two agreed-on *hadith*, the second in Sahih-Muslim, confirm that disobedience of the emir is a punishable offense to be dealt with most severely on Judgment Day. Third, the Prophet's own disciples, for example, Umar Ibn Al-Khattab, evidence an obedience to the Prince of the Faithful that was unrestricted by land or territory. Fourth, unanimity exists among *ulema* confirming that "obedience to the Emir is mandatory in matters pertaining to jihad. Jihad is not waged in the House of Islam [sic: Islamic countries] but outside its borders." Finally, chief works in jurisprudence further confirm this indivisibility.⁹⁶

Corrupt Pillar #4: Qualified Shaykhs versus the "Shaykhs of Jihad and the Ports." The three principles described above, Sayyid Imam alleges, hurl open and immeasurably expand the scope of permissible slaughter. Law is not just about the principles, however, but one's legal qualifications for issuing authoritative legal rulings/opinions (*fatawa*). This illicit enlarging of permissible targets is complimented, he asserts, by al-Zawahiri's illicit winnowing of scholars authorized to issue legal rulings. Specifically, he asserts that al-Zawahiri wrongfully claims that only those sheikhs who sanction Al Qaeda's activities—pejoratively described by Sayyid Imam as "the shaykhs of jihad and of the ports"—are legitimate, whereas those who rule against Al Qaeda necessarily aid and abet the enemy, undermine Islam, and sabotage the "*jihadi*" movement.⁹⁷ Ten allegations are offered against this attempt to restrict this scholarly examination of the *Sharia*-based proofs for the lawfulness of 9/11.

First, only qualified experts in the law and not proof-texting novices, can guard against the inexpert use of classical legal opinions whose time, place, and circumstances were so often different from those facing contemporary Muslims. This is particularly vital in matters of *jihad*, and under contemporary political circumstances throughout the world. "Predecessor ulemas wrote books for eras that are different from our eras," Sayyid Imam asserts,

eras in which Muslims had a discrete House of Islam, a Caliphate, and a Caliph, and in which there were clear distinctions among ranks and among various people, such as Muslims in the House of Islam and the kuffar [infidels] in the House of War. In the House of Islam, the dhimmi . . . was different in appearance from the Muslim. All this no longer exists now, for the people have mixed together. . . . This can be fathomed only by an expert in shar'i.⁹⁸

Second, scholars knowledgeable in the law must *also* be knowledgeable of present day conditions (i.e., the empirical facts of contemporary society and life). "The meaning of fatwa is 'to know one's duty in real conditions,'" Sayyid Imam claims, "and it is not permissible to apply what is in the books of theology except through a fatwa from somebody qualified to do this, somebody who is knowledgeable about shar'i and about the realities of present day conditions."⁹⁹

Third, owing to the potentials for great harm done to lives, honor, and property, anonymity is impermissible from those who would claim to produce *fatawa* for *jihad*. This applies perhaps especially, but not just to, those "*shaykhs of jihad*" inhabiting cyberspace whose knowledge and judgment, Sayyid Imam states, "should not be accepted without

scrutiny and without knowledge of the shar'i qualifications of those who post them and their integrity, especially material containing incitement to Muslims to go on a collision with others."¹⁰⁰

Proofs confirming the necessity of bona fide, thoroughly investigated, publically recognized scholarly credentials, especially in matters related to blood and property, consists of the following: *Qur'an* 4:94, frequently cited by Sayyid Imam, is cited to support the need always before launching armed operations, of the necessity of "investigating carefully if one goes abroad";¹⁰¹ agreed on *hadith*, from Anas also earlier cited, about the care with which Prophet Muhammad treated a date he found on the road, not knowing whether it was intended for charity or not, and the inference from a second agreed-on *hadith* (cited by Al-Nu'man Bin Bashir) that if one is to err on the side of caution in unknown circumstances, an even heavier burden of proof exists on those who would rule on matters dealing in life, honor, death. Sayyid Imam asserts in this regard: "I have seen some people who are not good at answering a question on the theology of prayers or ablution [purification] yet issue fatwas and order the shedding of blood and [destruction of] property wholesale," to which he asks rhetorically, "Is this acceptable in the Islamic religion?";¹⁰² key classical works of jurisprudence confirm that it is "inadmissible to accept or act upon a fatwa by an anonymous mufti," from which Sayyid Imam inductively reasons that therefore "[a] fatwa by an unknown source on the internet is not acceptable."¹⁰³ And what applies to anonymous violent incitement on the internet, also applies to the anonymity enveloping Al Qaeda's *Sharia* committee. Sayyid Imam, asserts in relation to Al Qaeda's claimed right to anonymity that, "the evidence of anonymous people is not acceptable in religion, even if such persons call themselves Islamic shari'ah committee or shaykhs of Islam. The person who gives evidence must be identified and his character known."¹⁰⁴

Fourth, one must properly rank the *Sharia* sources in accordance with their Divine authority. *Qur'an* and the *Sunna* of Prophet Muhammad are privileged as Allah's Book and Allah's Divine Messenger. Next in authority, the accepted consensus (*ijma*), and sound analogical proofs (*qiyas*). The various statements and *fatwa* issued by *ulema*, while vital for their scholastic merit and for assisting in the formulation of appropriate questions and burdens of proof, "do not constitute proof under Allah's Religion and are not among the evidence of the shar'i rulings listed in works on the principles of theology."¹⁰⁵ Fifth, the further removed from the Divine source, the likelier one's error-proneness, ergo if even all companions and successors to the Prophet are fallible, "what would the case be for the rest of the Sahaba [disciples] . . . even though they are the masters of the Muslims? [And] [w]hat would the case be for the ulemas who came after them!"¹⁰⁶

Sixth, mere imitation (*taqlid*), without reference to original sources for scholarly proof, is an impermissible basis for legal opinions. Directly quoting Ibn Taymiyyah, Sayyid Imam asserts:

As for the sayings by some of the four Imams and others, those are not binding arguments and do not constitute *ijma* [unanimity, consensus] reached through the consent of Muslims. Actually they, the four seminal imams, Hanaf, Shafi Malik, and Ibn Hanbal . . . were known conclusively to have forbidden people to imitate them and to have ordered them, if they see a saying in the Book or Sunna more credible than their sayings, that they should adopt what the Book and Sunna indicated and discard their sayings.¹⁰⁷

Ibn Taymiyyah clarifies further, what is meant by the terms invalid and objectionable: "As for invalid and objectionable imitation, this means the acceptance without proof of sayings by the others."¹⁰⁸

Seventh, it is impermissible to apply the *Sharia* post-hoc to apologetically rationalize and seek to justify potentially impermissible conduct. "Beware of fiqh al-ta'bir [justificatory jurisprudence]," Sayyid Imam warns:

It often happens in our times that somebody is tempted by something or commits a folly, then looks after he does it for evidence in the Book or Sunna that justifies his folly or spares him blame. This exists among individuals and groups, and they are not at a loss to find a semblance of evidence, irrespective of the fact that they apply it in a way contrary to the purpose of the Legislator [Allah].¹⁰⁹

Eighth, genuine mastery of the *Sharia* presumes a knowledge of the principles and methods of jurisprudence, integrity among honest *ulema*, and in cases of doubt, privileging the avoidance of likely corruption over the probability of pursuing more optional beneficence.¹¹⁰ Moreover, if one is unable to find a credible scholar, he "must not do anything if he does not know its judgment in God's religion" and this is especially the case with *jihad* since "jihad involves destruction of life and assets. So a Muslim must verify jihad."¹¹¹ Ninth, acts of perfidy and betrayal disqualify persons from legal authority and are among the gravest sins; this applies also to those followers who do not actively and openly disavow the actions guilty of those cardinal sins.¹¹²

Finally, it is not just the impermissibility of anonymity, but senior Al Qaeda *Sharia* committee members' open dissent from the decision to betray their emir Mullah Omar, that is most telling. *Qur'an* 2:44 demands that righteous conduct be practiced, not just preached: "Do ye enjoin right conduct on the people, and forget (to practice it) yourselves. And yet ye study Scripture? Will ye not understand."¹¹³ This dissent was registered at the highest levels: "Did you seek the fatwa of your shari'a committee before carrying out the treacherous 9/11 attacks? Did not Abu Hafs and Abu-Ubaydah . . . blame Bin Ladin for carrying out those attacks behind the back of the Emir of the Faithful, Mullah Muhammad Umar? Are both these men not members of your shari'ah committee?"¹¹⁴

Conclusions and Implications

The exposition above, given its minutiae and religious origins, may be viewed by some as arcane, irrelevant, and wholly unrelated to those measures deemed more effective in disrupting, dismantling, and ultimately defeating Al Qaeda-based and -inspired terrorism. Some may claim its exuberant, cumbersome scholastic apparatus concerns only learned theologians deeply ensconced in tucked-away and remote seminaries. This would be a grave error, however.

This theologico-juridical case against mass casualty terrorism generally, and 9/11 specifically is, in the opinion of the present author, *exactly* the mode and manner in which the battle for the "hearts and minds" of those committed to *Salafist*, militant Islamic orthodoxy is to be waged. This *is* the *jihad* of the pen. It is the very opposite of an abstractly conceived Western-style attempt at "counternarrative," "counterideology," or an even more remote so-called war of ideas.¹¹⁵ This battle, again, must be waged by Islamic supremacist militant *jihad*-realist religious scholars, and victory can only be secured by more persuasively marshalling and more deftly presenting convincing proofs based on mastery of the methods and sources of *Usul al-Fiqh*.

Besides illustrating the methodology involved in the militant Islamist *jihad* of the pen, a second goal of this article has been to offer a detailed exposition of Sayyid Imam's case against Ayman al-Zawahiri and Al Qaeda and 9/11 in particular. I am convinced that it

represents, should it pass scholarly muster, a potentially devastating counterpunch to those seeking legal grounds to legitimize Al Qaeda–based and –inspired terrorism.¹¹⁶ Supposing that is the case, and that Sayyid Imam’s “rationalization” of *jihad* may be leveraged to further implode, fractionalize, and marginalize Al Qaeda from its potential recruits and sympathizers, the following is key.

First, U.S. counterterrorist countermessaging must leverage Sayyid Imam’s impeccable *jihad*-realist and scholarly credentials and target potential religiously motivated high value terrorist recruits for whom *Sharia* compliance is essential for their participation in the *jihad*. They must be fully apprised by all means possible of the most formidable legal objections against Al Qaeda mass casualty terrorism Sayyid Imam has produced.

The core message to be communicated, and around which all others should be related, is the following: *Jihad* is a binding religious prescription until Allah’s word reigns supreme. However, the *jihad* is governed by jurisprudence, and prudence, and in those terms, Al Qaeda mass casualty terrorism is *not* legal *jihad*. Again: the Islamic law of war—the military *jihad*—remains valid for observant *jihad* realist orthodox Muslims until the Day of Judgment. However, murder, treachery, betrayal, and violation of oaths; post-hoc manipulation of Allah’s *Sharia* to justify abhorrent forbidden acts of mass murder; the devastating consequences for Islam arising from bin Laden’s and KSM’s personalized acts of revenge; these and more, are *haram*.

Renowned scholars of *Sharia* have exclusive provenance in these matters, and the *jihad* of the pen must be conducted in their terms, on their turf, and exclude any and every interest unrelated to the legal questions at issue. Because U.S. motives are at present deeply suspect in large parts of the Muslim world and U.S. credibility strained and stained by its close association with regimes and strategic interests deemed hostile to the Muslim world, extreme care must be exercised to publicly disassociate official U.S. government means from efforts seeking to leverage and officially publicize these endeavors.

A final point. It is vital to understand that the chief U.S. government countermessaging strategic objective should *not* be ideological de-radicalization but rather behavioral disengagement from terrorism. As recent scholarship has demonstrated, it is possible for one to maintain radical and even militant views, including those advocating fundamental changes in an existing order, yet determine that terrorism is illegal, immoral, or does not pay (imprudent).¹¹⁷ Moreover, the necessity of a nuanced understanding of Islam, Islamism, *Salafism*, fundamentalism, and the many shades of Islamicity, and secularity, in the Muslim world is key to assisting this endeavor to promote behavioral de-radicalization.¹¹⁸

Deep disagreement with the United States over foreign and military policy vis-à-vis the Muslim world does not translate for the vast majority into active support for or the condoning of Al Qaeda–based and –inspired mass casualty terrorism. It is a fool who casts a net so wide as to sink his ship with fish he cannot eat when a tiny net thrown precisely at a struggling, dying few seeking to escape a quickly ebbing tide, was all that was needed.

Notes

1. Sayyid Imam, *Exposure of the Exoneration Book* [Al-Ta’riya li Kitab Al-Tabri’ya] (Hereafter, *Exposure*), Part 5, p. 4; (Text completed by the author 25 March 2008, and published in 13 parts in Arabic by *Al-Misri Al-Yawm*, between 18 November–2 December 2008, available at www.opensource.gov).

2. *Exposure*, Part 3, p. 3.

3. *Doctrine of Rationalization [i.e. Right Guidance] for Jihad Activity in Egypt and the World* [Wathiqat Tarshid Al-’Aml Al-Jihadi fi Misr w’Al-Alam] (Hereafter, *Rationalization*),

November 2007, Part 1, p. 5, serialized in *Al-Sharq al-Awsat in Arabic* and partially available at www.opensource.gov.

4. Interview conducted in Turrhah Prison, n.d. conducted just after release of *Rationalization*, serialized in Arabic in *Al-Hayah*, Part 6, p. 2 (Hereafter, *Al Hayah*) and available in English translation through www.opensource.com

5. Sayyid Imam published his initial "revisionist" work, *Doctrine of Rationalization [i.e. Right Guidance] for Jihad Activity in Egypt and the World* [Wathiqat Tarshid Al-'Aml Al-Jihadi fi Misr w'Al-Alam] (Hereafter, *Rationalization*), November 2007, serialized in *Al-Sharq al-Awsat in Arabic* and partially available on www.opensource.gov. Al-Zawahiri then produced his chief rebuttal, published four months later, *Exoneration: A Treatise on the Exoneration of the Nation of the Pen and Sword of the Denigrating Charge of Being Irresolute and Weak* (Hereafter, *Exoneration*), released for official distribution by Al Qaeda, March 2008 (Engl. transl. Anonymous, 268 pp. Available at www.megaupload.com/?d=3TEBKJW, accessed 12 January 2011). Sayyid Imam then produced his response to that rebuttal, *Exposure of the Exoneration Book* [Al-Ta'riya li Kitab Al-Tabri'ya], completed by the author 25 March 2008, and published in 13 parts in Arabic by *Al-Misri Al-Yawm*, between 18 November–2 December 2008. Available at www.opensource.gov. See also, the majority of a 10-hour, 2-day exclusive first-ever interview conducted in Turrhah Prison, n.d. conducted just after release of *Rationalization*, serialized in Arabic in *Al-Hayah*, and available in English translation through www.opensource.com

6. Office of the President of the United States, *National Security Strategy*, May 2010, p. 4. Available at www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf (accessed 9 May 2010); United States Department of Defense, *Sustaining Global Leadership: Priorities for 21st Century Defense*, p. 4. Available at www.defense.gov/news/Defense_Strategic_Guidance.pdf (accessed 9 January 2010).

7. For select Western analyses and commentary of this broader "revisionist" trend, see: MEMRI, "Major Jihadi Cleric and Author of Al-Qaeda's Shari'a Guide to Jihad: 9/11 Was a Sin; A Shari'a Court Should Be Set Up to Hold Bin Laden and Al-Zawahiri Accountable; There Are Only Two Kinds of People in Al Qaeda—The Ignorant and Those Who Seek Worldly Gain," MEMRI Special Dispatch Series No. 1785, 14 December 2007. Available at memri.org; MEMRI, "Major Jihadi Cleric and Author of Al-Qaeda's Shari'a Guide to Jihad Sayyed Imam vs. Al Qaeda (2): Al-Zawahiri Was Sudanese Agent—Sudan's VP Ali Othman Taha Hired Him to Attack Egypt; Ban on Jihad against Egyptian Regime in Egypt; Summary of Imam's New *Right Guidance for Jihad* Book," 25 January 2008. Available at memri.org; Jarret Brachman, "Al Qaeda's Dissident: How the Prison Writings of Sayyid Imam al-Sharif, One of al Qaeda's Founders Now Labeled a Turn Coat, are Doing More to Expose the Terrorist Group's Hypocrisy than Anyone Else," December 2009. Available at www.foreignpolicy.com; Lawrence Wright, "The Rebellion Within: An Al Qaeda Mastermind Questions Terrorism," *The New Yorker*, 2 June 2008, pp. 37–53; Daniel Lav, "The Party of Jurisprudence vs. The Party of Action: Sayyed Imam, Ayman Al-Zawahiri, and the Split in the Jihad Movement," *MEMRI Inquiry and Analysis Series*, No. 144, 29 May 2008. Available at www.memri.org; Daniel Lav, "An In-Depth Summary of Sayyid Imam's New Polemic Against Al-Qaida, 'Exposing the Exoneration,'" 23 February 2009. Available at www.memri.org; Omar Ashour, "Post-Jihadism and the Inevitability of Democratization," *Arab Reform Bulletin*, 10 November 2009. Available at carnegieendowment.org/2009/11/10/post-jihadism-and-inevitability-of-democratization; Peter Bergen and Paul Cruickshank, "The Unraveling: Al Qaeda's Revolt Against Bin Laden," *The New Republic*, 11 June 2008; Nic Robertson and Paul Cruickshank, CNN, "New Jihad Code Threatens Al Qaeda," 10 November 2009. Available at edition.cnn.com/2009/WORLD/Africa/11/09/Libya.jihadi.code/; Khalil Al-Anani, "Jihadi Revisionism: Will It Save The World?," *Middle East Brief*, No. 35, April 2009, pp. 1–7. Available at www.brandeis.edu/crown/publications/meb/MEB35.pdf

8. For brief biographical details on Sayyid Imam, see: *Al-Sharq al-Awsat Online* in Arabic, "Report Lists Stages in Life, Career of Egypt's Jihad Group Leader Dr. Fadl" (*Al-Sharq al-Awsat Online* in Arabic, "Report: Seven Places Which Made Up Dr. Fadl's Life, the First Amir of Egyptian 'Jihad' Organization"), 19 November 2009. Available at www.opensource.gov. See also, *Al-Hayah*,

Part 1, p. 2, for Sayyid Imam's account of his lineage, birth date, residence, educational credentials, training and employment as a surgeon, relation to the Al Jihad case for which he was convicted and later fled the country, and his involvement as a surgeon on the fields of *jihad* from 1982 until being apprehended in Yemen and subsequently imprisoned in Egypt.

9. See, Montasser Al-Zayyat, *The Road to Al-Qaeda: The Story of Bin Laden's Right-Hand Man*, trans. Ahmed Fekry; ed. Sara Nimis (London and Ann Arbor, MI: Pluto Press, 2004; orig. Arabic, Cairo, 2002), p. 68.

10. Quoted in Ahmad al-Khatib, "Al-Jihad Leaders Are Anticipating Dr. Fadil's [sic] Revisions, [Al-Jihad] World Leaders Support Him," in *Al-Misri al-Yawm* in Arabic, 15 November 2007; in English, "Al-Jihad Organization Leaders in the World Voice Support to Imam's Revisions," 15 November 2007. Available at www.opensource.gov

11. See William McCants (editor and project director), Jarret Brachman (project coordinator), and LTC Joseph Felter (director, Combating Terrorism Center), *Militant Ideology Atlas*, Executive Report, "Appendix I, Ideological Influence Map," p. 12 (listed as 'Abd al-Qadir b. 'Abd al-Aziz) (West Point, NY: Combating Terrorism Center, November, 2006).

12. See "Jihadi Revisionism: Will It Save The World?," *Middle East Brief*, No. 35, April 2009, pp. 1–7. Available at www.brandeis.edu/crown/publications/meb/MEB35.pdf (accessed 18 September 2011).

13. For just one example: *Al Hayah*, Part 3, p. 7: "[J]ihad will continue until the Day of Resurrection. It is not confined within one particular organization as some might imagine. It is a shari'a obligation that will continue until the end of time."

14. *Exposure*, Part 2, pp. 2–5; See also, Part 4, pp. 2–3, 4, 5; Part 5, p. 4; Part 6, p. 3; Part 7, pp. 1–2, 6; Part 8, p. 3; Part 11, p. 1; Part 13, p. 5; *Al-Hayah*, Part 3, p. 6.

15. *Exposure*, Part 2, p. 4, provides a list of these ten "religious proscriptions against killing Americans in masse" that Al Qaeda seeks to remove; See *Exposure*, Parts 2–6, for exposition of the entire legal argument.

16. Sayyid Imam cites the following evidence: *Qur'an* 9:123; the classic exegete Al-Qurtubi's exegesis of 9:123; *fatawa* by Ibn Taymiyya (*Majmu Al-Fatawa*, 21/317); and various Al Qaeda innovations requiring demonization of the United States.

17. *Exposure*, Part 3, pp. 5–6.

18. . *Rationalization*, Part 6, p. 4.

19. *Exposure*, Part 4, p. 2; See also, *Rationalization*, Part 6, p. 4: "[I]t is by no means permissible to assume the right to kill a human being just because he belongs to a certain country (killing on nationality). This heterodoxy is without precedent in the heritage of the [sic: Muslim] Nation. Affiliation by an individual to a certain country is no proof of his Islam or kufr, for the objective of affiliation to nations and similar affiliations is just identification . . . Allah made the affiliation to a people or a tribe merely a means of identifying the individual, following this by statements showing that affiliation is not a criterion of being favored because this is decided on the merit of piety and righteousness." Citing *Qur'an* 49:13 (ibid., p. 4), Sayyid Imam asserts: ". . . And [We] made you into Nations and tribes, that ye may know each other (not that ye may despise each other). Verily, the most honored of you in the sight of Allah is (he who is) the most righteous of you."

20. Ibid.

21. See, *Al-Hayah*, Part 3, p. 7.

22. *Exposure*, Part 4, pp. 3–4. Regrettably the Open Source Center has not translated the entirety of *Rationalization* and several additional arguments to which Sayyid Imam makes reference are therefore excluded from present consideration.

23. *Rationalization*, Part 6, p. 2.

24. *Exposure*, Part 4, p. 3.

25. *Exposure*, Part 2, p. 4; Part 4, p. 4.

26. Peters, *Islam and Colonialism: The Doctrine of Jihad in Modern History* (The Hague, Paris, New York: Mouton Publishers, 1979), chapter 2, pp. 20–21.

27. *Rationalization*, Part 7, p. 4.

28. The inviolability of human life, and Muslim life specifically, is well attested in the sources. For example: In *Qur'an* 5:32: "On that account: We ordained for the Children of Israel that if anyone slew a person—unless it be for murder or spreading mischief in the land—it would be as if he slew the whole people; and if anyone saved a life, it would be as if he saved the life of the whole people"; *Qur'an* 6:151: "... Take not life, which Allah hath made sacred, except by way of justice and law"; The true servants of Allah, according to *Qur'an* 25:68: "Those who invoke not, with Allah, any other god, nor slay such life as Allah has made sacred, except for just cause." In the Hadith: In *Sahih Al-Bukhari* Book 2 [dealing with "Iman" or Faith/Creed], chapter 36, #48), we read: "Narrated Abdullah (bin Masud), The Prophet said, 'Abusing a Muslim is Fusuq (an evil doing) and killing him is Kufr (disbelief).'" And in *Sahih-Muslim*, Book 31, #6219 (transl. Abdul Hamid Siddiqi, Lahore, Pakistan, Sh. Muhammad Ashraf, 2004): "A Muslim is the brother of a Muslim. . . . It is a serious evil for a Muslim that he should look down upon his brother Muslim. All things of a Muslim are inviolable for his brother in faith: his blood, his wealth, and his honor"; *Sahih-Muslim*, Book 14, # 4152–4155, transmits that only three conditions permit the killing of a Muslim: murder of another Muslim, apostasy, or adultery.

29. The thirteenth-century Mongolian invasion of Muslim lands, including a Mongol-assimilated Turkic sub-group the Tatars, whose name later became conflated with the western-most reaches of this empire, used this very tactic, thus furnishing the medieval juristic context. See also, en.wikipedia.org/wiki/Tatars; en.wikipedia.org/wiki/Human_shield (accessed 25 September 2011).

30. *Exposure*, Part 2, p. 2; Part 4, p. 4; See also, *Rationalization*, Part 5, p. 3; Part 7, extensively discussed at pp. 2, 4–5.

31. Citing *Qur'an* 6:119.

32. *Rationalization*, Part 7, p. 2.

33. *Ibid.*

34. *Rationalization*, Part 7, p. 2.

35. *Ibid.*

36. *Exposure*, Part 4, p. 4, pp. 5–7; see also, *Rationalization*, Part 7, pp. 3–4.

37. *Exposure*, Part 4, pp. 5–6; Al-Zawahiri, *Exoneration*, pp. 171–172.

38. *Exposure*, Part 4, p. 6.

39. Citing, Al-Shafi'i, *Al Umm* (4/162).

40. Citing, *Al-Sayr al-Kabir* 5/69.

41. R. Peters, *Islam and Colonialism* (pp. 15–16) identifies the following categories as exempt by scholarly consensus (*ijma*) from participating in offensive *jihād*: minors, the insane, slaves, women, the ill and handicapped, those who do not possess the necessary means for an expedition, those who did not obtain permission of their parents, and debtors who did not obtain permission of their creditors.

42. See, "Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10024 [KSM]," Unclassified, 10 March 2007. Available at www.haguejusticeportal.net/Docs/NLP/US/Muhammad_transcript.10-3-2007.pdf (accessed 23 August 2011).

43. See, Foreign Broadcast Information Service (FBIS), *FBIS Report, Compilation of Usama Bin Ladin Statements, 1994–January 2004*, "Afghanistan: Bin Ladin Denies Involvement in Terrorist Attacks in US", p. 157, translated from the Pashto; orig. 16 September 2001.

44. See, "A Communique from Qa'idat al-Jihad Concerning the Testaments of the Heroes and the Legality of the Washington and New York Operations," in David Cook, *Understanding Jihad* (Berkeley: University of California Press), "Appendix: Document 3," 2005, p. 176.

45. *Al-Hayah*, Part 6, p. 2. See also: "[A]nyone who enters the House of War [foreign countries] and is given a peace covenant from its inhabitants (like a visa, even if it is forged) is forbidden afterwards from assaulting their lives, property, or honor" (*Al Hayah*, Part 4, p. 3); "[A] person who enters the countries of the unbelievers by virtue of a visa is forbidden to betray them even if they aggress on Muslims other than him. This is because the visa is a personal pledge between him and the unbelievers" (*Exposure*, Part 6, p. 4); "[K]illing civilians, foreigners, tourists, destroying property, or aggression on the blood and property of the ma'sumin [infidel inviolable persons] under the claims of jihad . . . is haram" (*Rationalization*, Part 5, p. 6).

46. See, for example, *Rationalization*, Part 7, p. 3: “The kuffar [infidels] did not give him [Muslim] security and allow him to enter their country in order that he should betray them, so he has to reciprocate security, and this is incumbent upon him even if they do not make it an explicit condition on him, since it is understood. The theological rule that stipulates that ‘what is understood from norms is akin to what is an express stipulation’ so if he betrays them he has committed a cardinal sin through which he engaged in debauchery. This is because of the saying of the Prophet . . . ‘Whoever does injustice to a mu’ahid [somebody with whom Muslims have a covenant] or who is a dhimmi [Christian or Jew allowed to live in a Muslim country] will not find the scent of paradise’ . . . and . . . also ‘for every betrayer there will be a banner identifying him on the Day of the Resurrection.’ This is an agreed upon Hadith.”

47. *Exposure*, Part 5, p. 2. Here (ibid.) also citing Ibn Qudama’s hanbali fiqh text, *Al-Mughni ma’a Al-Sharh al-Kabir*, 12/587, which states in regard to implicit meaning: “[B]etraying them [infidels] is forbidden because they have given him [a Muslim] the safety on the condition that he does not betray them and that he does not subject them to harm coming from him. Even if this is not stated explicitly in words it is known from meaning.”

48. Ibid.

49. Also, *Al-Hayah*, Part 6, p. 3: “Ulema do not disagree on this issue.” See for detailed quotes from classical ulema, *Exposure*, Part 5, 2–4; Part 6, p. 2; *Rationalization*, Part 7, pp. 3–4. Peters, *Islam and Colonialism*, confirms this consensus among the sunni madh’hab: “A Moslem who enters enemy territory with an *amān* [security compact] granted to him by the non-Moslems, is considered to have implicitly accorded *amān* to them. This *amān*, then, is only binding upon himself. On the strength of it he is not allowed to kill the non-Moslems or take their property” (p. 32).

50. Although not cited by Sayyid Imam, the following verse also supports this duty: “. . . As long as these stand true to you, stand ye true to them: for Allah doth love the righteous” (*Qur’an* 9:7).

51. See, *Rationalization*, Part 7, pp. 3–4; *Exposure*, Part 6, pp. 2–4.

52. *Rationalization*, Part 7, p. 4. In a hand-written, signed letter from Al-Masra’ah Prison in Turah District on the 9th anniversary of 9/11 (originally published in *Al Misri Al-Yawm in Arabic*, “Jihad Mufti Condemns 09/11 Bombings, Opposes Building Mosque Near Ground Zero,” 18 September 2010, www.opensource.gov), Sayyid Imam states in reference to now-deceased Anwar Al-Awlaqi’s call on “Muslims to kill their American colleagues,” that “This is in contravention to Islam’s teachings.” Citing the history of Prophet Muhammad’s interaction with Ethiopian Christians, Islam’s long history of interaction with the Christian West, and Prophet Muhammad’s gratefulness “to all those who were good to him whether humans, or animals,” that “Muslims who live safely in the United States, Europe, or elsewhere should not harm the people of these countries or abuse the liberties existing there.”

53. See, *Exposure*, Part 6, p. 2, citing *Al-Umm* 4/165, repeated at 4/189.

54. Prophet Muhammad is reported to have said “War is deceit” (See: *Sahih-Al-Bukhari* [#3028–3030] in trans. Dr. Muhammad M. Khan, *The Translation of the Meanings of Sahih Al-Bukhari*, Arabic-English, vol. 4, Riyadh-Saudi Arabia: Darusallum, 1997, vol. 4, chapter 56, The Book of Jihad). This seems akin to the concept of permissible military deception (MILDEC) in the U.S. armed forces, but *not* brazen treachery or perfidity which in Islam and the West is considered so dishonorable as to be evil, and a violation of any essential bases for civility, regulated warfare, and conflict resolution.

55. *Exposure*, Part 5, pp. 4–5.

56. Ibid., p. 5; citing Ibn Hajar citing Al-Nawawi, in *Fath Al-Bari*, 6/182.

57. *Exposure*, Part 5, p. 5.

58. *Exposure*, Part 6, p. 2; citing Sahih Al-Bukhari (3495), Muslim (4657). Proofs already offered in #8 above dealing with the importance of pledges, and impermissibility of breaking covenants of security, are also cited here.

59. *Exposure*, Part 6, p. 3.

60. *Rationalization*, Part 3, pp. 4–5.

61. *Exposure*, Part 6, pp. 4–5.

62. Ibid., p. 4.

63. Ibid. Providing in addition, further citation from Qur'an (7:28), *hadith*, several classical *fatawa* (including Ibn-Taymiyyah), and *tafsir* (Ibn Kathir).

64. *Exposure*, Part 2, p. 3.

65. Ibid.

66. Ibid.

67. Ibid.

68. Ibid; also, *Exposure*, Part 5, p. 2. Sayyid Imam describes Al Qaeda's own Shura Committee, apprised by June 2001 that a major operation against the United States was being prepared, as having registered very strong legal objections on grounds related to the need for explicit permission from the Emir (Mullah Omar), and also the rules relating to al-Tatarrus. See also, National Commission on Terrorist Attacks Upon the United States, *Final Report of the National Commission on Terrorist Attacks Upon the United States* (aka: *The 9/11 Commission Report*) (New York: W.W. Norton, 2004), pp. 250–252, where this dissension is noted at the highest organizational levels of Al Qaeda, regarding the legality and prudence of attacking the United States from territory under the sovereignty of Mullah Omar.

69. *Exposure*, Part 2, p. 3.

70. See, *Rationalization*, Part 4, p. 2, citing *Qur'an* 8:39. For classic Islamic sources authorizing this religious prescription, see Paul Kamolnick, *Delegitimizing Al-Qaeda: A Jihad-Realist Approach* (Carlisle Barracks, PA: US Army War College, Strategic Studies Institute, March 2012), Notes 19–20, pp. 30–33.

71. Ibid., citing *Qur'an* 40:28, 18:16, 18:13.

72. Ibid. Further, marriage between Muslims and non-Muslims was only prohibited after *hijra* and the truce of Al-Hudaybiyah Prophet Muhammad concluded with the non-believing Meccan Quraysh (citing *Qur'an* 60:10).

73. Ibid.

74. Ibid.

75. *Rationalization*, Part 2, p. 1. Citing here, *Qur'an* 17:15, 2:286, and the theological principle that stipulates persons are only accountable after the Word has been revealed.

76. *Rationalization*, Part 2, p. 1; also, *Rationalization*, Part 3, p. 2.

77. *Rationalization*, Part 3, p. 3; citing the fact that Prophet Muhammad waived *jihad* for those Meccans unable to emigrate to the new Muslim polity in Medinah, and thus "Allah did not make it a duty on them but excused them"; and also *hadith* (ibid., pp. 3–4), citing a tradition in which Prophet Muhammad states that Jesus is permitted by Allah to postpone until the End Times a fight with Yagog and Magog (two demonic antagonists) "because of incapacity to do so" (found in *Sahih-Muslim*, quoting Al-Nuwas Bin Sam'an). Sayyid Imam uses analogical reasoning to state that therefore should infirmity remain a perpetual circumstance relative to greater powers, one may postpone until the end time if necessary, an armed confrontation.

78. Ibid.

79. *Rationalization*, Part 3, p. 4, citing Ibn Taymiyya, *Minhaj Al-Sunna al-Nabawiya* [The Methodology of the Prophet's Sunna].

80. *Rationalization*, Part 1, pp. 4–5; citing *Qur'an* 4:100, 5:27, 5:64, and 99:7–8; and two agreed-on Hadith, one in Muslim, the other agreed on by Ibn Abbas; Also, Sayyid Imam citing *Qur'an* 99:7–8: "[T]he Almighty said: 'Then shall anyone who has done an atom's weight of good, see it [taken into account on the Day of Judgment]. And anyone who has done an atom's weight of evil, shall see it.'"

81. *Rationalization*, Part 3, p. 4. Citing *Qur'an* 9:41, "which made *jihad fard ayn* for the conquest of Tabuk yet *Qur'an* 9:91–92 waives this individual duty for those who could not; the *Sahih* accounts of Jabir and Anas" an agreed upon hadith states that sincere intention to wage *jihad*, despite incapacities, is rewarded; a hadith corroborated by Abu Dawud citing Abdallah Bin Amr, that extends the scope of expenses required for *jihad* to those needed to support one's family in one's absence; and finally, that Prophet Muhammad allocated one year's expenses for his own family.

82. Ibid.

83. *Rationalization*, Part 3, p. 5. This general principle: “[I]t is not permissible to do what is not allowed in order to perform a duty which is not required” is supported by the above-referenced hadith which asserts in part that “he still gets the reward for jihad if his intentions are sincere but he could not do it.” Also, citing *Qur’an* 40:19; a *hadith* by Al-Tirmidhi, who describes it as good and sound, and *hadith* in Al-Bukhari, citing Anas Bin Malik, on the temptations of money to corrupt; and finally, the theological text by Ibn Nujaym al-Hanafi, *Al-Ashya wa Al-Nazayir*, for the theological principle that “what is built on corruption [in this case, the illicit financing of jihad] is corrupt.”

84. *Rationalization*, Part 3, pp. 2–3.

85. *Ibid.*, p. 3.

86. *Ibid.* He states: “It is not permissible to change [combat] vice with the hand except for somebody who has authority in his place, like a father among the members of his house, or to save a Muslim from something that leads to irrevocable perishing. We also see that it is not permissible to clash with ruling authorities in the name of jihad in the countries of the Muslims for the sake of application of Shari’a. The Hadith proscribing combat against Yagog and Magog provides proof that the waiving of the duty of jihad during incapacity is a rule that remains until the end of time, so no Muslim should feel that he sinned in waiving jihad during incapacity . . .”

87. See, *Rationalization*, Part 4, p. 4; Part 5, pp. 5–6.

88. Citing, *Qur’an* 8:65 and 8:66 as evidence for Allah lightening the burden on Muslim combatants from a ratio of 10 enemy to 1 Muslim, to 2:1 (“For the present Allah hath lightened your [task]”), from which Sayyid Imam reasons: “If Jihad’s purpose was just to clash with the enemies, He would not have legitimized this easing of burden.” Also citing a *hadith* in which Ibn Abbas acknowledges 2:1 not fight, 3:1 fight; and finally, by analogy if weaponry imbalances are a sufficient reason for waiving the duty to fight in a specific battle, this should also apply to the number of combatants.

89. *Rationalization*, Part 4, p. 5; citing *Qur’an* 8:16; Umar Bin Al-Khattab’s placing of Islamic life and interests above imprudent fighting, cited in Ibn Abd-Rabbu al-Andalusi, *Al-Aqd al Farid*; Khalid Bin al-Walid’s judgment bearing on the need to avoid uneven confrontation, and counseling withdrawal in the Conquest of Mu’tah, cited in Ibn Kathir, and mentioned in his explanation of Bukhari, *Al-Maghazi* [raids, offensive *jihads*]; finally, an agreed-on *hadith*, cited by Anas bin Malik, confirming that al-Walid’s strategic retreat was counted by the Prophet.

90. *Rationalization*, Part 4, p. 5. Sayyid Imam asserts: “Allah the Almighty . . . allowed Muslims to conclude truces and treaties when there is need for these. The Prophet . . . did all these things. He fought, concluded treaties, entered into truces, and took no action on certain people with whom he had neither truce nor treaty. All this was done to serve the interests of Islam and the Muslims . . . because of need.” *Chief proofs include: Qur’an* 8:61, which states in part, “But if the enemy incline towards peace, do though (also) incline towards peace”; *Qur’an* 47:35, which establishes that it is only “when ye should be uppermost” that a “crying for peace” is unacceptable, that is, if the probability of victory is higher, and capability and ability exist to wage war and uphold *jihad*, then it is impermissible to sue for peace; if one is incapacitated or infirm, however, it is permissible.

91. *Rationalization*, Part 4, p. 5. It is impermissible to conclude *sulh* or *hudnah* with apostates if one is uppermost in power, since Sayyid Imam states, “the infidelity of apostasy is far worse than original infidelity,” citing Ibn Taymiyah, *Majmu Fatawa*, v. 28; However, under conditions of weakness, he states citing Muhammad Bin Al-Hasan al-Shaybani, *Al-Sayr al-Kabir*, living 500 years earlier than Ibn Taymiyah under conditions of weakness “it is permissible for Muslims to pay money to the apostates to spare themselves from their harm in the event of the weakness of the Muslims.”

92. In his *Al-Hayah interview* (see, Part 6, p. 2) Sayyid Imam states that since the law of *jihad* rules that a “powerless person in infidel countries is not required to conduct jihad” other options must be exercised, including: “engage in a jihad that propagates the Islamic call [i.e. dawa, or preaching],” [and] “[i]f they are unable to do that, they can repudiate abominable acts in their hearts, which is a duty in any case,” [or he] “can conceal his faith and use what is allowed in the shar’iah, like dissimulation.”

93. *Al-Hayah*, Part 6, p. 2; In *Exposure*, Part 3, pp. 2–3, a more expansive list is offered: “The legitimate options include jihad and also reconciliation, truce, isolation of one’s self, hiding [Muslim] faith, patience, and other options.”

94. *Exposure*, Part 3, p. 3.
95. *Exposure*, Part 2, p. 4, for all proofs confirming this indivisible sovereignty.
96. Citing the hanbalite Ibn Qudama's, *Al Mughni*, and *Al-Sharh al Kabir*.
97. *Exposure*, Part 2, p. 4.
98. *Rationalization*, Part 2, p. 2.
99. Ibid. Citing here a corroborated *hadith* on the dangers of ignorance leading to *fatwas* without knowledge (otherwise, unreferenced), and also Ibn al-Qayyim's, *L'lam al-Muwaqqi'n*, on the importance of *fatwas* produced by those learned both on duties and existing conditions.
100. *Rationalization*, Part 2, p. 2.
101. Ibid., p. 3.
102. Ibid.
103. *Al Hayah*, Part 6, p. 3, citing Abu-Hamid al-Gazali, *Al Mustafa* and Ibn-Qudamah, *Rawdat al-Nadir*.
104. Ibid., p. 4. Sayyid Imam (ibid.) asserts also that "the evidence of ignorant people is not acceptable according to God's religion," and in a *hadith* in Muslim asserting that evidence is permissible only from Sunnis, but not heretics, the implication being Al Qaeda voiders of the law are to be considered the latter.
105. Ibid., p. 3.
106. Ibid. Citing Imam Malik Bin Anas, "No one is infallible in this Nation after the Prophet." Also, Ibn al-Qayyim, *L'lam al-Muwaqqi'n*, v. 4, who confirms that the question of post-Prophet fallibility was debated among the earliest successors.
107. Ibid.
108. Ibid. Other cited major theological works that identify contradictions among the opinion of Prophet Muhammad's successors and the Prophet's Sunna include Abu Amr Bin Abd-al-Barr, *Jam'i Bayan al-Ilm*, and Ibn Hazm, *Al Ahkam fi Usul Al Ahkam*, "each compiled a chapter on statements by the Sahaba which contradict with [sic] Sunna. Also, *Qur'an* 2:170, for the error of following one's ignorant fathers rather than Allah's revealed word."
109. Ibid., (pp. 3–4), citing *Qur'an* 17:82, on the benefits that accrue to the just, and punishments awaiting the unjust; also (p. 4) citing Ibn al-Qayyim, *Ighathat Al-Lahfan min Masayid Al-Shaytan*, who draws an analogy to "'the people of heterodoxy who believe something first then search for evidence to support their belief, whereas the people of Sunna search for evidence first then believe.'"
110. See esp. *Al-Hayah*, Part 6, pp. 3–4. Citing (at p. 3) the *hadith* in Al-Bukhari, who (Al-Bukhari) interprets the Prophet's words: "'A group of my nation will continue to exist for ever on God's order'" as signifying the *ulema*, or religious scholars; and also Muslim, citing Muhammad Bin-Sirin, on the importance of knowing fully about the knowledge and character of those from whom one learns religion; *Qur'an* 17:36, on not pursuing that about which one is ignorant (i.e., does not possess sufficient religious knowledge); *Qur'an* 4:94, again, on the requirement that one investigate carefully before going to *jihad* abroad.
111. Ibid., p. 3.
112. Ibid. Citing *Qur'an* 65:2, 49:6, and 24:4, persons guilty of such wickedness, that is, perfidity and betrayal, cannot stand as witnesses, let alone authorities; citing also (ibid., p. 4) Al-Shafi'i, *Al-Umm*, and Ibn-al-Qayyim, *Zad al-Ma'ad*, who recount Prophet Muhammad's attribution of perfidity and treachery to those followers of the Bani-Qurayzah tribe who did not disown perfidity committed by their kin; Sayyid Imam's *qiya* based on that: "So everyone of Bin Ladin's followers and others who accept Bin Ladin's traitorous and treacherous acts—even if they were in the farthest corners of the east or west—deserve the same verdict as treacherous, betrayers, unbelievers, and hypocrites, like Bin Ladin"; and *hadith*, narrated by Abu-Dawud, on Prophet Muhammad's *sunna* regarding witnesses that do not disown and abhor sin, also being guilty of those sins.
113. Ibid.
114. Ibid.
115. For select contributions to this vast, and ever-growing literature touting the utility of various "non-*jihadi*" counternarrative strategies, techniques, and recipes—often imagined as silver bullets—for disabusing the Muslim world of such "myths," "narratives," "ideologies," "religious

ideologies,” and other foibles allegedly at the heart of their distorted and contorted “occidental” imagination of the Western Other, see: Kenneth Payne, “Winning the Battle of Ideas: Propaganda, Ideology, and Terror,” *Studies in Conflict and Terrorism* 32 (2009), pp. 109–138; William D. Casebeer and James A Russell, “Storytelling and Terrorism: Towards a Comprehensive ‘Counter-Narrative Strategy,’” *Strategic Insights* 4(3) (2005). Available at www.au.af.mil/au/awc/awcgate/nps/casebeer_mar05.pdf; Angela Trethewey and Steven R. Corman, “Out of Their Heads and into Their Conversation: Countering Extremist Ideology,” Consortium for Strategic Communication, Arizona State University, Report #0902, 14 September 2009. Available at comops.org/article/123.pdf; Bud Goodall, Angela Trethewey, and Kelly McDonald, “Strategic Ambiguity, Communication, and Public Diplomacy in an Uncertain World: Principles and Practices,” Consortium for Strategic Communication, Arizona State University, Report #0604, 21 June 2006. Available at comops.org/article/116.pdf; H. L. Goodall, Jr., “Why We Must Win the War on Terror: Communication, Narrative, and the Future of National Security,” *Qualitative Inquiry* 12(1) (2006), pp. 30–59; Tom Quiqqin, “Understanding al-Qaeda’s Ideology for Counter-Narrative Work,” *Perspectives on Terrorism* 3(2) (2009), pp. 18–35. Available at www.terrorismanalysts.com; Heather S. Gregg, “Fighting the Jihad of the Pen: Countering Revolutionary Islam’s Ideology,” *Terrorism and Political Violence* 22 (2010), pp. 292–314; Simon Cottee, “Mind Slaughter: The Neutralizations of Jihadi Salafism,” *Studies in Conflict and Terrorism* 33 (2010), pp. 330–352; Allison G. Smith, “From Words to Action: Exploring the Relationship between a Group’s Value Preferences and Its Likelihood of Engaging in Terrorism,” *Studies in Conflict and Terrorism* 27 (2004), pp. 409–437.

116. For a less sanguine view of Sayyid Imam’s sincerity, and potential relevance to current “jihad” aspirants, see: Nelly Lahoud, “Jihadi Recantations and Their Significance: The Case of Dr Fadl,” in A. Moghadam, and B. Fishman, eds., *Fault Lines in Global Jihad: Organizational, Strategic, and Ideological Fissures* (London: Routledge, 2011), pp. 138–157. At the least Lahoud’s account calls into question Sayyid Imam’s reluctance to definitely clarify the relation between earlier and more recent writings. Lahoud fails I believe to systematically and comprehensively engage Sayyid Imam’s detailed proofs and cannot account for the systematic manner in which an anti-Al Qaeda legal assault could be leveraged even if issues of potential arrogance or obstinance exist.

117. See, especially: John Horgan, “Deradicalization or Disengagement?: A Process in Need of Clarity and a Counterterrorism Initiative in Need of Evaluation,” *Perspectives on Terrorism* 2 (2008). Available at terrorismanalysts.com/pt/index.php/pot/article/view/32/html (accessed November 2011).

118. For scholarly analyses of Salafism and Wahhabism, see, for example: Roel Meijer, ed., *Global Salafism: Islam’s New Religious Movement* (New York: Columbia University Press, 2009) generally, but especially Thomas Hegghammer, “Jihadi-Salafis or Revolutionaries? On Religion and Politics in the Study of Militant Islamism,” in Roel Meijer, ed., *Global Salafism: Islam’s New Religious Movement* (New York: Columbia University Press, 2009), pp. 244–266; Quintan Wiktorowicz, “Anatomy of the Salafi Movement,” *Studies in Conflict and Terrorism* 29 (2006), pp. 207–239; International Crisis Group, “Indonesia Background: Why Salafism and Terrorism Mostly Don’t Mix, September 13, 2004. Available at www.crisisgroup.org; Natana J. Delong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (New York: Oxford University Press, 2004). Christina Hellmich, “Creating the Ideology of Al Qaeda: From Hypocrites to Salafi Jihadis,” *Studies in Conflict and Terrorism* 31 (2008), esp. pp. 114–119 for a devastatingly accurate critique of what this author terms “outside-in” scholarship on Al Qaeda, and key failures in conceptualizing salafism, so-called Wahhabism, and in consulting primary sources such as Ibn Taymiyyah’s actual *fatawa* or al-Wahhab’s actual theological demands, instead of exclusively consulting the group-think that mostly rests on often-ignorant or biased commentary. For what the present author regards as a most sophisticated, persuasive, and nuanced critique of the presumption of a fundamentalist-terrorist nexus—whether Salafi, Wahhabi, or otherwise—see Muhammad Haniff Bin-Hassan, “Key Considerations in Counterideological Work against Terrorist Ideology,” *Studies in Conflict and Terrorism* 29 (2006), esp. pp. 541–547.