

ISLAMIC JUST WAR THEORY AND THE CHALLENGE OF SACRED SPACE IN IRAQ

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The ongoing conflict in Iraq has transformed sacred sites into battlefields.¹ Iraq's Sunnis and Shias are firebombing one another's mosques and executing assassination attempts on religious and secular leaders in the midst of prayer. Insurgents in Iraq are also using mosques as rallying points, tactical bases and sites for the storage of weapons in the irregular war against U.S. troops. These attacks have placed U.S. forces in a difficult position: Attacks on mosques alienate the local population, bolstering Iraqi support for the insurgency; but repeated failure to pursue insurgents into mosques hampers U.S. operations and provides insurgents with a tactical advantage.

A series of clashes between U.S. forces and Iraqi insurgents in the fall of 2004 exemplified the tremendous challenges posed by combat in sacred space. In early October 2004, U.S. troops launched operations at seven mosques in the town of Ramadi, the southwestern point of the Sunni triangle. Although U.S. forces remained outside the mosques while their Iraqi counterparts searched for weapons, Ramadi residents responded in anger to these incidents, decrying U.S. desecration of their sacred sites. One prominent Sunni cleric, Sheikh Muhammad Bashar al-Faydi, launched an appeal to Pope John Paul II to condemn the attacks. Another, Sheikh Abdullah Abu Omar, exclaimed: "This cowboy behavior cannot be accepted. The Americans seem to have lost their senses and have gone out of control."²

By early November, operations in Ramadi began producing tangible results. Marines found weapons, ammunition and explosives in four Ramadi mosques including—in one mosque alone—fifty sticks of TNT, fifty-one pounds of black powder, eighty-eight mortar rounds, thirty artillery rounds, five rockets and several machine guns. Inside another, troops found explosives rigged to a transceiver, a setup presumably designed to implicate U.S. forces in the demolition of the mosque. Marines succeeded in preventing the destruction of yet another mosque, Ramadi's largest, in which they had uncovered a weapons cache. Having established positions on the roof of the mosque, they noticed a car careening towards the building. Firing

at the car, the marines unleashed secondary explosions, possibly indicating that the driver had been a suicide-bomber who was intent on destroying the mosque.³

What are the public relations implications of various U.S. responses to the insurgent use of mosques?⁴ To the extent that defeating the insurgency in Iraq involves a successful appeal to Iraqi “hearts and minds”, understanding public perceptions regarding just and unjust behavior in war provides a useful analytical tool. I am particularly interested in how the *Hadith*—oral traditions relating to the sayings and deeds of the Prophet Mohammad—and Muslim just war theory treat the implications of conflicts at sacred sites. Because the primary audience for U.S. counterinsurgency operations is Iraq’s Sunni community, the sources I focus on in this paper are those considered most authoritative by this particular community.

I begin with a brief overview of the Islamic sources used in this paper to evaluate the just war implications of fighting in mosques. I then qualify my use of these sources by considering the challenges posed by a biased selection of sources, misrepresentation of these sources and the questionable relevance of these findings to the current situation in Iraq.

In the third part of this paper, I briefly survey the empirical pattern of mosque use by insurgents in Iraq, the American response to this practice and the three challenges that this situation poses to just war theory. Each of these challenges is examined in the three sections that follow: The limitations on the use of force within a sacred site; the protection of civilians in or near the mosque; and the requirements that the site itself be safeguarded from violence. I offer insights into the ethical implications of each scenario based on relevant Muslim oral traditions and jurisprudence.

To demonstrate the potential contribution of just war reasoning to the management of conflicts at sacred sites despite these challenges, I conclude the paper with an analysis of a significant historical precedent, the Saudi response to a hostage crisis in Islam’s holiest site, the Grand Mosque of Mecca in 1979. This incident highlights the importance of cooperating with religious authorities who can interpret laws restricting conflict at sacred sites in a manner that is conducive to the successful conclusion of military operations.

ISLAMIC ORAL TRADITIONS, JURISPRUDENCE AND JUST WAR

Both traditional sources for contemporary Muslim just war thinking, Islamic oral traditions and Islamic jurisprudence, trace their roots to the religion’s founding years. The *Hadith*—collections of direct and transmitted oral reports about the sayings and actions of the Prophet Mohammad—were compiled and canonized during the 8th and 9th centuries. Because these reports provide an indication of the *Sunnah*—the way of life of the Prophet and his companions—they are regarded as valuable elaborations and additions to the guidance provided by the Quran. The

Quran and the *Sunnah* (as transmitted through the *Hadith*) have, in turn, provided the basis for Islamic jurisprudence, or *Fiqh*. One branch of this jurisprudence, dealing with appropriate and inappropriate behavior at times of war, is Islamic just war theory, which experienced its greatest revival in the writings of scholastic Muslim thinkers between the 8th and 12th centuries.

What can the study of these texts teach us about the management of conflicts involving sacred sites in Iraq? I argue that the traditions relating to the Prophet and Islamic just war theory underlie modern Muslim conceptions of what is just and unjust in war. Like Augustine and Aquinas' arguments on just war—which contributed to the construction of what is acceptable, required, or prohibited in Western conceptions of war—early medieval Islamic scholars shaped current Muslim understandings of fairness and deceit, guilt or innocence in war.⁵ Thus, an understanding of traditional Muslim just war theory is imperative for persuading Muslim observers that U.S. operations in Iraq are constrained by ethical guidelines.

In deliberating the justifications for military actions, restrictions on the use of force or protection of civilians, U.S. decisionmakers and U.S. forces are drawing, consciously or otherwise, on elements from Western just war theory.⁶ The foundation for these debates in the Christian West rests with St. Augustine in the 4th century and St. Aquinas in the 13th century, as well as with their followers in the high and late Middle Ages, who were among the first scholars to engage with questions regarding the definition of a just cause for war, the proper authority to wage war and the requirement for minimizing force during battle. These just war thinkers have come to affect the practice of war in the West by indirectly shaping the Geneva and Hague Conventions, the founding documents of international institutions that govern the practice of war (such as the charters of the United Nations and the International Committee of the Red Cross), core principles of international law regulating war and even the training manuals of the U.S. military and the Marine Corps. As Americans grapple with these questions, they are rarely explicit in invoking the traditional sources of just war theory. Instead, they cite these institutionalized and legalized manifestations of Christian just war theory more familiar to a Western audience.

References to the canonical sources of Western just war theory seem prudent if the aim is to persuade American or European observers that operations in Iraq are influenced by moral imperatives. However, if U.S. troops wish to exhibit ethical restraint to a local audience, either in Iraq specifically or the Middle East more generally, an appeal to Christian or Western sources seems sorely misguided. To “win the hearts and minds” of Iraqis, U.S. troops should look to Islamic sources on the conduct of just war, not to their Christian counterparts.

The impact of classical Islamic thought on Iraqi public opinion is indirect, to be sure. Presumably, few Iraqis are familiar with the legacy of 9th century Muslim

theologians and fewer yet invoke such arguments when they justify or condemn specific insurgent practices. Nonetheless, common understandings of just and unjust behavior in war implicitly rest on chains of arguments, practices and institutions that can be traced to early Islamic scholars. *Fatwas*, religious rulings issued by clerics that are based directly or indirectly on arguments from the *Sunnah* and the *Fiqh*, drive both insurgent activities and popular support for these activities.⁷

A study of 9th century Islamic thought on the inviolability of sacred space should lend insight into how Iraqi observers interpret and judge U.S. counterinsurgency operations involving mosques. Of particular relevance are the *Hadith* collected in the 9th century by the Imam Bukhari (810 to 870 C.E.) and the writings of Muhammad al-Shaybani (unknown to 804/805 C.E.).

Muslims consider Muhammad ibn Ismail ibn Ibrahim ibn al-Mughira al-Bukhari to have compiled the most authentic *Hadith* collection, recognized as forming the cornerstone of the *Hadith* tradition by Sunni Muslims.⁸ Many consider this collection to be the most important Islamic text after the Quran. Bukhari is said to have collected over a half-million reports about the Prophet and his companions. He determined authenticity by developing methods for tracing and documenting the genealogy of *Hadith*. Of these, he selected the most accurate and reliable reports, less than 3,000 in all, for inclusion in his collection. Known as *Sahih al-Bukhari*, meaning “Bukhari’s authentic [collection],” it arranges reports by subject matter for the reader’s convenience.

Abu abd Allah Muhammad ibn al-Hasan ibn Farqad al-Shaybani was a formative member of the Hanafi school of Islam, the predominant legal tradition in the Muslim world and in Iraq today.⁹ He was a student of abu Hanifah, the founder of that school, and Malik ibn Anas, the founder of the Maliki school of jurisprudence. Having studied in both Medina and Iraq, Shaybani was appointed to a high position in the court of the reigning caliph in Baghdad. His *Kitab al-Siyar al Kabir* (“Book of Conduct”) is the primary Sunni commentary on international relations and the laws of war.¹⁰ Written in a period in which the Muslim empire grew rapidly to include non-Arab Muslims, the “Book of Conduct” offered the first guidelines for Muslim political attitudes towards the non-Muslim world as well as discussions of the rights that should be accorded to non-Muslims under Muslim law. Shaybani drew previous texts on statecraft together into a single canonical framework that provided the legal means and rationale for the expansion of Muslim rule in the 8th century.

CHALLENGES AND OPPORTUNITIES

The just war implications of these texts are complex, ambiguous and often inconsistent. Moreover, any application of classical Islamic thought to current events in Iraq, such as the analysis attempted here, stands to raise more questions than it can answer. Before moving on to examine the implications of early Islamic oral

traditions and jurisprudence for counterinsurgency operations in Iraq, I must address three challenges posed by the use of 9th century Islamic sources. These challenges involve the risk of bias, the problem of misrepresentation and the question of contemporary relevance.

The first challenge has to do with the limited number of sources on which I rely.¹¹ Even within these sources, my analysis is anything but comprehensive. There are thousands of *Hadith* in Bukhari's collection and multiple volumes of Shaybani's thought to which I shall not make reference.

Second, in using English translations of Arabic texts, I have risked misrepresenting the original intentions of these authors. These translations are fraught with ambiguity and their analysis requires interpretation, an inherently subjective

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enterprise. Third, the relevance of this analysis to the contemporary Iraqi case is problematic: The Prophet's sayings and the opinions of Muslim jurists are intended for the consumption of Muslim jurists, not U.S. troops. It is Islamic soldiers who are admonished to respect Christian sacred sites, permitted to fight albeit only defensively in Muslim sacred space and allowed to sidestep some of the laws of war when these pose an unreasonable impediment to fighting. How relevant are these laws to non-Muslim fighting in Muslim sacred space?

Despite these challenges, there are several good reasons to rely on these particular sources for insights regarding current events in Iraq. Though alternative sources are available, the authors I have selected are recognized as having exerted the most significant influence on the development of Islamic just war thinking and their texts are seminal. Bukhari and Shaybani are recognized as members of the renowned *Taba' at-Tabi'in* ("Second Generation"), the elite group of early Muslim thinkers and leaders who followed, in letter and spirit, in the footsteps of the first generation of Muslim scholars.¹²

Unlike Christian just war theory, which was designed for employment in conflicts between Christian rivals only and could be disregarded when facing a Muslim opponent, Muslim just war theory was designed to regulate Islam's wars of expansion.¹³ It may not have applied to Muslim encounters with polytheists, such as Hindus, but it most certainly applied to combat with Christian or Jewish enemies. Though Bukhari and Shaybani wrote with a Muslim readership in mind, their admonitions regarding military conduct apply to conflicts across religious divides.

Moreover, these scholars are considered authoritative by the very segments of Iraqi society that are most likely to be affected by U.S. counterinsurgency operations in mosques. Though Sunni insurgents often target Shia mosques, their battles with U.S. troops tend to occur around Sunni mosques, where insurgents can expect to

find safe refuge. Thus, the relevant observers of American counterinsurgency operations in mosques are Iraqi Sunnis, who traditionally follow the Hanafi and Shafi'i schools of Sunni Islam.¹⁴ Shaybani, one of the most influential figures in early Hanafi Islam, was also a teacher of Muhammad ibn Idris al-Shafi'i, founder of the Shafi'i school of Islam. Bukhari's *Hadith*, on the other hand, are recognized as supremely authoritative by both Hanafi and Shafi'i Muslims.

Though Shaybani and Bukhari wrote twelve centuries ago, their texts continue to be invoked by Middle Eastern leaders and clerics in their discussions of contemporary conflict. For example, Shaybani and his "Book of Conduct" provided Saudi cleric Abd-al-Muhsin al-Ubaykan with insights on the limits on jihad, inspired the design of a new flag for an Iraqi jihadist group called "The Islamic State of Iraq" and was cited by Osama Bin Laden to justify his offering rewards for the killing of American and English leaders.¹⁵

Because al-Bukhari's *Hadith* are considered among the most authoritative in Islam, he is referenced even more frequently than Shaybani, be it in interviews with Hezbollah Secretary General Hasan Nasrallah, in messages from Abu-Mus'ab al-Zarqawi and Osama Bin Laden, in Al-Qaeda communiqués, on jihadists web sites, in sermons delivered in Jerusalem and in statements by sympathizers of the Islamic Brotherhood in Egypt.¹⁶ In a recent letter by Abu Ayyub al-Masri, Zarqawi's successor in Iraq, to Ayman al-Zawahiri, the presumed leader of Al-Qaeda in Iraq, the author uses a quote from Bukhari's *Hadith* calling on Muslims to "help the sufferer" to defend the need for cooperation between their respective movements.¹⁷ Clerics in Saudi Arabia and Arab League members routinely invoke verses from Bukhari to admonish against internecine Muslim violence ("It is forbidden for a Muslim to encroach on his fellow Muslim's blood, property and honor") and even to forbid attacks on the United States, an ally of Saudi Arabia ("He who kills a non-Muslim whose security is pledged will not smell Paradise").¹⁸ Reportedly, Bukhari's *Hadith* also makes for popular reading among Al-Qaeda prisoners in Guantanamo Bay.¹⁹ A recent U.S. Defense Department list of influential Muslim scholars places Bukhari ahead of Bin Laden in impact among militant Arabs.²⁰

Most importantly, elements from Bukhari's collection formed the foundation of the "Mecca Covenant", a declaration issued in October 2006 by Sunni and Shia clerics who gathered in Saudi Arabia to stem the sectarian violence in Iraq. The declaration relied on classical Muslim commentators in justifying a series of *fatwas* that forbade kidnappings, incitement of hatred and attacks on mosques.²¹

In other words, Al-Bukhari and Shaybani's contemporary influence is consistent and significant. At the same time, there is no easy way to determine whether Iraqi civilians also employ these sources in evaluating counterinsurgency operations in Iraq today. They need not do so explicitly or even consciously. The century-old

Hadith in Bukhari's collection and Shaybani's arguments about limitations on warfare have by now permeated Muslim traditions in a myriad of ways. Indeed, they have extended their influence further yet: According to the International Committee of the Red Cross, Shaybani's prohibitions on the destruction of monasteries and churches during war, discussed below, provided one source for the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which seeks to protect "movable or immovable property of great importance to the cultural heritage of every people...whether religious or secular...."²² An analysis of classical Islamic just war theory can thus provide a glimpse, however oblique, into the foundations of what contemporary Iraqis might consider appropriate and inappropriate behavior in war.

THREE ETHICAL QUESTIONS ABOUT SACRED SPACE AND INSURGENCY IN IRAQ

Data from American clashes with Iraqi insurgents over the last four years reveals three challenges posed by insurgent use of mosques in Iraq. First, insurgents use mosques to rally public support for the insurgency. Sunni clerics have used their podiums to exhort the public to join in the insurgency and to call for a holy war against American soldiers.²³ The use of mosques as sites for the storage of ammunition poses a second and more significant challenge to the success of counterinsurgency operations in Iraq. In mosques throughout the Sunni Triangle, U.S. soldiers have found explosives and bomb making materials, rifles, machine guns, bullets, mortars and rounds, rocket-propelled grenades and launchers, anti-American propaganda and pro-insurgency documents.²⁴

Enemy fire directed at U.S. troops from mosques poses the third and greatest difficulty. Since the onset of American operations in Iraq, the media has reported hundreds of incidents in which U.S. forces came under fire originating from Iraqi mosques. In most cases, single insurgents have used rifles or rocket-propelled grenades to target soldiers from the interior of mosques or their minarets. Often, clashes between soldiers and insurgents end with the retreat of the insurgents into the apparent safety of the mosque and a final clash at the site.²⁵

American soldiers have tried to minimize the harm to Muslim shrines during combat operations. These efforts, intended to mitigate the popular backlash against the American presence in Iraq, have often come at the cost of military expediency. In some cases, U.S. troops have abandoned operations altogether for fear of harming a sacred shrine.²⁶ At the other extreme lie cases in which U.S. operations have ended with significant damage to sacred sites in Iraq. Thus, combat in sacred places poses significant tactical challenges for U.S. counterinsurgency operations.

At the same time, this type of combat raises three interesting normative questions, the answers to which shape public perceptions of such operations. The first

and most basic challenge arises from the presence of U.S. soldiers within the confines of a sacred site and the offense to religious sensibilities that such a presence might provoke. It is here that counter-insurgency operations touch on the broader issue of desecration. The adverse reaction of Iraqi observers to the desecration of Muslim sacred space by U.S. troops raises the question: Under what conditions may non-Muslims enter Muslim sacred space?

Compounding the problem of desecration is a second issue, namely the potential harm to worshippers. This matter touches directly on just war theory: Because mosques are public structures, attacks on mosques involve the use of force against the unarmed civilians who are likely to congregate at such locations, thereby raising problems of discriminatory and proportionate force. In this second issue area, fighting near mosques raises the same problems associated with combat near schools or markets. The question raised here is: What obligations must U.S. troops assume when their attack on a mosque exposes non-combatants to risk?

Finally, assaults on insurgents who seek refuge in a sacred space are likely to result in damage to that space. How do Muslim traditions link the destruction of a site to the concept of desecration and how can such desecration be mitigated? I examine these questions in the three sections that follow.

May Non-Muslims Enter Muslim Sacred Space?

Desecration—the transgression of the boundary between the sacred and profane—is not merely an offense to the sensibilities of those who revere a sacred site. It is understood by these practitioners as a tangible assault on the status of the site that, if successful, can strip a site of its sanctity. The Jewish scriptures and the Quran are replete with examples of sacred sites that have been defiled and rendered profane by infidels. These texts also provide painstaking descriptions of the complex procedures required for the cleansing and reconsecration of sites that have undergone such trauma. As a consequence, believers have shown themselves willing to use force to prevent the desecration of their holy places or avenge such transgressions.

Fighting near Iraqi mosques has resulted in a consistent outcry over the desecration of sacred space by U.S. soldiers. Iraqis object to both the behavior of U.S. soldiers upon entering mosques and to the very presence of non-Muslims in or near mosques. Objections of the first kind have to do with the manner in which U.S. soldiers enter these shrines. Specifically, it is their failure to comply with the requirements of *tahara*, or ritual cleanliness, that causes outrage.²⁷ Soldiers cause offense by disregarding the required gestures of approach, such as ritual ablution, the removal of shoes and the discarding of weapons. Once inside the mosque, soldiers can trigger indignation in an endless variety of ways. These include acting or talking inappropriately, handling items considered sacrosanct, consuming foods prohibited

by Islam, spitting, smoking or even posing irreverently for the media.

Complicating matters further, the sources on which Muslims might rely in order to decide whether or not an act amounts to sacrilege offer vague and often contradictory guidance. Primary among these are the *Hadith*, the oral traditions relating to the deeds and sayings of the Prophet Mohammad. For example, four separate *Hadith* collected by Bukhari report that the Prophet Mohammad refused to allow those who had consumed garlic, onions or other malodorous vegetables to enter his mosque.²⁸ However, the same collection of sayings describes the Prophet downplaying an incident of urination in a mosque.²⁹ In yet another *Hadith* published by Bukhari, Mohammad sanctions a performance by Ethiopian dancers armed with small spears in the courtyard of his mosque.³⁰

Fighting near Iraqi mosques has resulted in a consistent outcry.

The question regarding the very presence of non-Muslims in mosques poses similarly daunting problems given the lack of agreement between Muslim jurists regarding the law on this matter.³¹ Sura 9:18 of the Quran reminds the faithful: "None should visit the mosques of God except those who believe in God and the Last Day, attend their prayers and render their arms levy and fear none but God." Sura 9:28 admonishes: "Believers, know that the idolaters are unclean. Let them not approach the Sacred Mosque...."³² Both passages leave open the question of who constitutes an idolater, leading several Muslim to interpret the injunctions narrowly as referring to polytheists. In this interpretation, Jews and Christians may enter mosques upon invitation.³³ This majority opinion also draws on excerpts from the *Hadith*, recounting incidents in which Muslims were permitted to pray in churches and non-Muslims were permitted entry into the Grand Mosque in Mecca, the holiest of all mosques in Islam. Bukhari himself relays an incident in which the Prophet ordered a captive polytheist be tied to a pillar in a mosque.³⁴

Muslim communities have taken their own liberties in interpreting the restrictions on non-Muslim entry into mosques. In some Muslim states, the law simply prohibits non-Muslims from entering into mosques. Saudi Arabia, on the other hand, strictly prohibits the entry of non-Muslims into a fifteen-mile zone around the cities of Mecca and Medina.³⁵ While several of the protests in Muslim states over U.S. operations in Iraq have occurred in response to the killing of civilians or to the damage caused to sacred sites, others have responded to the mere presence of U.S. soldiers in Iraqi cities such as Najaf and Karbala, known for their sacred sites. The head of Iran's judiciary, for example, complained about the mere presence of Americans in Iraq's cities. According to a report by the Islamic Republic News Agency (IRNA), he lamented that "aggressors invade Al-Najaf and Karbala easily, sacrilege it and massacre Muslims living in the neighborhoods."³⁶

The U.S. military has responded by adopting a consequentialist stance on entry into mosques. Marines operate under orders that prohibit raids on mosques unless they are being used by insurgents for hostile purposes.³⁷ Responding to the indignation about mosque raids in Ramadi, for example, a Marine spokesman explained that “[t]he First Marine Division respects the religious and cultural significance represented by mosques. However, when insurgents violate the sanctity of the mosque by using the structure for military purposes, the site loses its protective status.”³⁸

Often, U.S. soldiers transfer responsibility for operations within a mosque to their Iraqi counterparts, especially when a shrine is recognized as being of particularly high importance.³⁹ Due to the inferior training of Iraqi soldiers, this strategy has proved to be of limited utility. Because they are no less likely to cause damage to structures or injure innocent civilians, Iraqi soldiers are equally hesitant to operate within shrines.⁴⁰ Indeed, they are often even more reluctant to enter mosques than their American counterparts due to the sharp rebuke their collaborative actions have drawn from Muslim leaders. During operations in Fallujah, for example, an irate member of the Association of Muslim Scholars in Iraq asked: “If the occupation forces approve of such behavior, then is it appropriate for [the National Guard] to be an obedient tool in their hand? Are they not Muslim? If they are not Muslim, then are they not at least Iraqis? Why this behavior and assault on the houses of God and why the desecration of mosques...?”⁴¹ Some in Iraq consider mosque raids that are executed by the Iraqi National Guard to be even more offensive than American incursions because “the guardsmen are supposed to be more appreciative than the Americans of mosques and their sanctity and more eager to preserve the souls of the citizens and their interests.”⁴²

Overall, however, Iraqi Sunnis view the entry of non-Muslims into mosques with relative lenience, compared to their co-religionists outside Iraq. The most prominent commentator on Bukhari’s *Hadith*, ibn Hajar al-Askalani, summarized the argument as thus: Hanafi scholars (such as Bukhari) permit non-Muslims to enter mosques unconditionally; Hanbali and Maliki scholars prohibit non-Muslims from entering mosques absolutely; whereas Shafi’i scholars side with their Hanafi peers but prohibit non-Muslims from entering the Grand Mosque in Mecca, the holiest mosque in Islam.⁴³ Because most Iraqi Sunnis associate with the Hanafi and Shafi’i schools, foreign entry into mosques poses less of a provocation in Iraq than it would in Hanbali Saudi Arabia or Maliki Algeria.

May U.S. Forces Expose Non-Combatant Worshippers to Risk?

The Quran is outright in its prohibition on the use of force within a sacred space. Sura 2:125 proclaims the Grand Mosque “a resort and sanctuary for mankind” and Sura 3:96 describes the location to be “a blessed site, a beacon for the nations.”⁴⁴

The implications of these statements are spelled out in the *Hadith*. There, the Prophet defines a mosque as “a sanctuary of peace and safety for all” and specifies that the inviolable status of a mosque (the *Haram*) extends from the killing of animals or the cutting down of trees within a mosque to the shedding of human blood.⁴⁵ One *Hadith*, collected by the founder of the Hanbali school of Islamic jurisprudence, Ahmed ibn Hanbal, in the 9th century, explicitly extends this protection to men of the cloth and believers at prayer: “Do not kill the monks in monasteries” and “Do not kill the people who are sitting in places of worship.”⁴⁶

Despite these admonitions, sacred sites have served as flashpoints of insurgency-related violence throughout Iraq’s troublesome history. The sacred Shia shrines in Najaf and Karbala, for example, have repeatedly played center stage in power struggles between Iraq’s Shia community and its Sunni rulers. Repressive 8th and 9th century rulers, such as al-Mansur, al-Rashid and Mutawakkil, sought to control the Shia community by demolishing the mosques in Najaf and Karbala. These mosques became not only centers of agitation against Sunni rule but fortified strongholds into which Shia rebels could withdraw at times of unrest. During the Shia uprising of 1991, seventy-one Saddam loyalists were lynched at the Mosque of Husayn in Karbala. Repression of this uprising, at the cost of some 300,000 Shia lives, involved the destruction of Shia mosques and the desecration of cemeteries across Iraq.⁴⁷ The uprising ended with an Iraqi siege against rebel strongholds in the two great Mosques of Karbala and the Mosque of Ali in Najaf. The three shrines were subjected to shelling from tanks, artillery and Scud missiles that caused significant damage to the shrines and all structures in their vicinity.⁴⁸

During the first Gulf War, Saddam Hussein purportedly tried to exploit Muslim sensitivities to the destruction of sacred space by accusing the United States of bombing the al-Basrah mosque in Baghdad, a mosque Hussein himself had covertly damaged.⁴⁹ British intelligence has concluded that Iraq’s regime was destroying shrines “with a view to blaming the coalition falsely for that damage.”⁵⁰ The examples that I cited in the introduction to this paper seem to suggest that insurgents have emulated this approach, seeking once again to implicate U.S. troops in the destruction of mosques.

Do such attacks by Muslims on their own sacred shrines relieve non-Muslims from the duty to protect these sites? In other words, does the law of retaliation apply to this category of cases? From the point of view of Western just war theory, the answer to this question is unambiguously negative. Thomist just war theory rejected the concept of *lex talionis*, arguing that the misdeeds of an adversary do not justify retaliation in kind. In this Christian account, how insurgents choose to treat Iraq’s mosques has limited implications for the U.S. culpability. Insurgent attacks on schools and markets do not excuse similar attacks by U.S. Marines just as the recent

use by insurgents of chemical substances against Iraqi civilians would not justify the use of chemical weapons by U.S. troops.⁵¹ Dilemmas regarding the safeguarding or attack on mosques persist, irrespective of insurgent behavior or the double standard that the Iraqi population might apply to insurgent acts.

This moral calculus plays out differently in Islamic just war theory, particularly in matters relating to the prohibition on the use of force in sacred space and tactics prohibited during siege warfare. As James Turner Johnson has pointed out, Muslim just war theory is contingent in contrast to the absolutist tendencies of Christian just war theory.⁵² The guiding principle in numerous Muslim sources appears to be a relaxation of restrictions on warfare if such restrictions impose an impediment on righteous self-defense. For example, Sura 2:191 of the Quran sets forth the limitations on the use of force in the Great Mosque in Mecca and, by implication, all other mosques: "But do not fight them within the precincts of the Holy Mosque unless they attack you there; if they attack you put them to the sword."⁵³ A provocation that gives rise to a just war *ipso facto* suspends the restrictions that would impede the effective execution of such a war.

Similarly, though Shaybani's "Book of Conduct" requires that a Muslim army at war keep Muslim non-combatants out of harm's way, this rule is relaxed and the use of indiscriminate means of warfare is permitted when besieging a city, even if it is clear that Muslim prisoners of war or merchants will be harmed. Shaybani's justification is consequentialist: "If the Muslims stopped attacking the inhabitants of the territory of war for any of [these] reasons, they would be unable to go to war at all."⁵⁴ This exception holds true even if the residents of a besieged city make strategic use of Muslim children as hostages. In such a case, Muslim warriors are admonished not to aim at the Muslim children intentionally, yet they are permitted to use inaccurate projectiles, fire or water against the besieged city.⁵⁵ Shaybani states that any possible deaths of innocent non-combatants require no expiation or atonement, presumably because the responsibility falls squarely on the shoulders of those who provoke the breach according to the rules of war.⁵⁶

Does the Destruction of Shrines during Battle Amount to Desecration?

The seeming incompatibility of Muslim and Christian positions with regard to the right of retaliation are complicated by varying interpretations of what constitutes damage to shrines. Iraqis and Muslims worldwide were outraged when the U.S. attacks on mosques in Falluja, Kufa and Samarra destroyed these structures completely, particularly when these attacks caused significant civilian casualties.⁵⁷ Yet Iraqis also erupted in protest in August 2003, when an U.S. helicopter blew away a flag from the minaret of a mosque, an incident that unleashed both a massive protest and clashes resulting in several Iraqi casualties.⁵⁸

The sensitivities of the Iraqi public to the destruction of sacred shrines reveals an interesting tension between the guiding principles of Hanafi and Shafi'i Islam, as represented by most Sunni Iraqis on one hand, and the attitudes towards sacred space exhibited by Salafi Muslims, including the majority of insurgents in Iraq, on the other. Whereas the former are required to respect all sacred shrines, Muslim and non-Muslim alike, the latter see the veneration of religious structures as amounting to idolatry.

Sunnis share a distaste for what they consider to be the excessive Shia reverential practices at the tombs of saints, yet Hanafi and Shafi'i Islam requires special regard towards religious structures. Shaybani saw fit to remind his readers of the pact between the Prophet Mohammad and the Christians of Najran, a pact renewed by Mohammad's successor, Abu Bakr, upon the Prophet's death: "They shall have the protection of God and the guarantee of Mohammad, the Apostle of God, that they shall be secured their lives, property, lands, creed, those absent and those present, their buildings and their churches. No bishop or monk shall be displaced from his parish or monastery and no priest shall be forced to abandon his priestly life."⁵⁹ In practice, Sunnis go so far as to elevate certain mosques above others in importance. These might include particularly old or large mosques located in Muslim capitals, such as the Umayyad Mosque in Damascus, the al-Aqsa Mosque in Jerusalem or Baghdad's Umm al-Qura and Abu Hanifa mosques.

Salafis consider the worship of shrines, aside from those at Mecca and Medina, corrupting.

On the other hand, many of the insurgents currently in Iraq are Salafi. They reject post-Quranic interpretations such as Shaybani's or traditions such as Bukhari's that are not included in the sacred text, relying instead on a strict reading of the Quran alone.⁶⁰ They seek to revive authentic Islam by harkening to the generation of Muslim leaders that surrounded and immediately succeeded Mohammad and by rallying against impure practices. Prime among these and oft decried by the founders of the Salafi movement, are polytheist practices such as the veneration of popular or auspicious shrines. Salafis consider the worship of shrines, aside from those at Mecca and Medina, alien to fundamental Islam and thus, corrupting.

It should come as no surprise, then, that while Iraqi civilians respond in dismay to the damage caused to mosques during battles between insurgents and U.S. forces, the insurgents themselves display few scruples in using these structures for tactical purposes. As far as Salafi insurgents are concerned, these are merely buildings. Thus, they are able to turn Sunni sensitivities towards sacred space to their advantage by provoking conflict at shrines, leading to popular outrage at destruction caused by U.S. troops, without compromising their own religious principles.

The tension between these competing Muslim perceptions of sacred space reached a poignant climax during the U.S. incursion into the Abu Hanifa mosque in Baghdad in November 2004.⁶¹ This mosque, one of the largest and most important Sunni shrines in Iraq, is venerated for containing the tomb of Abu Hanifah an-Numan, founder of the Hanafi school of Islam and Shaybani's mentor—the very authority that affirmed Sunni Islam's veneration for sacred shrines of all creeds. According to one U.S. commander, the mosque had become “insurgent-central” a gathering and recruitment site for insurgents.⁶² Neither ethical nor religious considerations inhibited the insurgents' use of the mosque as a base of operations. Indeed, rather than worry that their acts would draw counterinsurgency operations to the shrine, possibly resulting in damage or desecration, the insurgents were able to capitalize on the outrage expressed against the U.S. incursion into the mosque by local Sunnis.

The U.S. military has explicitly stated its intention of keeping Iraqi civilians out of harm's way during their exchanges with insurgents, though the record of the war thus far does not always bear this effort out. In line with this policy, U.S. forces have often taken care to avoid damaging mosques, even when it is clear that insurgents use these structures. When a target for aerial bombing is in the vicinity of a shrine, the military is said to allot additional time and caution for the identification and “painting” of targets by laser spotters.⁶³ Representatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO) have reportedly provided coalition forces with lists of cultural heritage sites in Iraq and have voiced their satisfaction with the American treatment of these sites.⁶⁴

LESSONS FROM THE 1979 SIEGE IN MECCA

The distinctiveness of sacred spaces, the peculiar rules that govern access to and behavior within these spaces and their central role in the lives of believers, create both doctrinal and moral obstacles to the execution of military operations in the vicinity of these sites. In the current war in Iraq, some of the moral obstacles seem insurmountable. Combat in sacred space poses a danger to civilians and increases the risk of desecration by virtue of acts of sacrilege that soldiers might commit because of their very presence in a mosque, or through the damage soldiers might cause to a site in the course of fighting. How can a reliance on classical Islamic just war theory shed light on these problems?

Evidence from one dramatic encounter between regular military forces and insurgents who made strategic use of a sacred site, suggests that familiarity with Islamic standards of just warfare can make or break the success of counterinsurgency operations. The hostage crisis in the Grand Mosque in Mecca in 1979 is particularly instructive because of the tremendous importance of the site involved and because of the clear impact of a religious ruling on public perceptions of combat at that site.

On 20 November 1979, a group of approximately 200 anti-Saudi insurgents locked the gates of the Grand Mosque in Mecca and opened fire at a crowd of 1,000 praying inside. Their leader declared himself *Mahdi*, the Muslim equivalent of the messiah, and demanded allegiance from all those present.⁶⁵ Within hours of the incident Saudi troops had surrounded the large mosque with soldiers and armored vehicles, placed a curfew on Mecca and rolled tanks into the city. Nevertheless the order to attack was not issued because of the strict prohibition on the use of force within the shrine.⁶⁶ As the formal guardian of the most sacred shrines in Islam, the Saudi government feared not only local unrest, but the angry response of the entire Muslim world. This fear proved all too justified during the ensuing standoff as Muslims around the world instigated riots against governments suspected of involvement in the crisis. In Islamabad, a mob spurred by false reports of American involvement in the takeover attacked the U.S. embassy, killing five Pakistanis and two Americans.⁶⁷

Within twenty-four hours, the Saudi king assembled the *ulama*, the learned council, to confer about his right to use live fire in the mosque. The *ulama's* initial ruling permitted only unarmed soldiers to enter the mosque. One hundred Saudi paratroopers, who were dropped into the mosque unarmed, were cut down by the insurgents' automatic fire before they even reached the ground.⁶⁸ An additional twenty-four hours of struggle with the theological implications of the situation led to the declaration of an unprecedented *fatwa*, a ruling that sanctioned the use of force inside the Mosque based on the aforementioned passage from the Quran, Sura 2:191, which permits use of force in a mosque only in retaliation to the initiation of force by an adversary. The *fatwa* read:

We gave him [King Khalid] our opinion, namely that it was necessary to call on them to surrender and lay down their arms. If they did so that would be accepted and they should be imprisoned then until their case was considered according to the Shariah [Islamic law]. If they refused, every measure should be taken to seize them even if it led to fighting them and killing those who are not arrested or who had surrendered, in accordance to what the Almighty says: "But fight them not in the Holy Mosque unless they fight you there. But if they fight you, slay them. Such is the reward of those who suppress faith..." Therefore fighting in the Haram has been permitted unanimously by the Ulama, in accordance with what the Prophet said...⁶⁹

With a green light from the *ulama*, the Saudi National Guard began pounding extremist positions in the mosque with howitzers and machine guns, finally entering

the courtyard with armored personnel carriers four days after the takeover.⁷⁰ Within hours most of the mosque had been cleared of insurgents.

Due to the ban on the presence of foreign media in Mecca, precise information about the operation remains unavailable. It is even stranger then, in the context of this ban and the popular outrage at rumors of U.S. involvement, to encounter persistent reports of foreign involvement in the Saudi operations. Several sources claim that U.S. Special Forces or members of the French Foreign Legion were called in to end the crisis after a series of failed Saudi attempts.⁷¹ If these accounts are reliable, the innovative boldness of the *ulama* ruling is unparalleled.

Broad public acquiescence throughout the Muslim world of the Saudi operation in the Grand Mosque highlights the importance of framing combat at sacred sites in terms acceptable to Muslim sensibilities. The 1979 incident offers mixed evidence that such framing will prove effective for U.S. operations in Iraqi mosques; the sacred site in question is the holiest in all of Islam. Nowhere is violence more strictly delimited than in Mecca. At the same time, the forces conducting the operation, or at the very least the authorities responsible for the operation, were themselves Muslim.

CONCLUSION

Could U.S. troops in Iraq put Islamic conceptions of justice in war to similar use? It seems that the costs of doing so are low and the potential benefits are significant. By displaying sensitivity to what traditional Islamic commentators have regarded as the proper code of conduct in sacred space, U.S. forces may be able to mitigate some of the ill will incurred through damage to mosques and inevitable acts of desecration. Doing so need not involve significant changes to U.S. doctrine.

Combat at sacred sites requires respect for the sanctity of shrines and caution regarding potential desecration. Yet, U.S. troops should not hesitate entering Sunni Iraqi shrines if they can secure local acquiescence prior to their entry from the religious authorities in charge of a particular mosque or from local government. Such acquiescence is more likely to be forthcoming if U.S. soldiers can reassure local believers that their use of force inside a mosque is occurring in response to prior insurgent transgressions, such as the initiation of fighting at a mosque or its use for weapon storage. Under these circumstances and in the heat of battle, Hanafi observers will not expect U.S. forces to refrain from action, remove their shoes or disarm.

Defense Department documents suggest that when U.S. troops have sought and received permission before entering a mosque, their entry elicited little to no public condemnation. Public response is likely to be minimal when the purpose of operation is a weapons search that does not damage the mosque, Iraqi troops participate and the search proves successful and therefore justified.⁷² Yet, troops have also secured acquiescence for entry into sacred sites during hot pursuits after insurgents,


most famously when the governor of Najaf permitted the entry of U.S. troops into the hallowed Wadi al-Salam cemetery to clear it of insurgents.⁷³

If troops are denied permission to access a mosque, U.S. commanders should consider the option of a siege, particularly given the permissive nature of Islamic rules on the use of force against the besieged. Such sieges pose operational challenges of their own because they drain time and resources. Since U.S. troops cannot afford to conduct multiple sieges at disparate sites in hostile territory, they must resolve standoffs quickly in order to resume anti-insurgency operations. Short of preemptively barring insurgents from mosques, incursions remain the most viable option for counterinsurgency forces facing attacks from the interior of mosques.

Finally, U.S. commanders can reassure themselves of the precise implications of their decisions, minimize transgressions and mitigate the adverse effects of transgressions by consulting with local religious leaders. Such leaders could act as go-betweens during a siege. They may be able to predict, explain and influence public perceptions of U.S. operations in sacred space by drawing on Muslim sources that have traditionally regulated combat involving mosques.

Contacting these actors and eliciting their cooperation will not be easy. The challenge stems not only from the natural reluctance of Iraqi religious actors to support U.S. operations in mosques, but also from the inability of U.S. decisionmakers at all levels to develop tools that facilitate cross-religious communication. This paper has attempted to investigate one such tool. I have argued that understanding Sunni public perceptions regarding just and unjust behavior in war provides a means for mitigating the effects of U.S. counterinsurgency operations in mosques. By examining the relevant sources, such as the *Hadith* and the writings of Muslim just war theorists, we can begin to predict the likely responses of worshippers to the entry of non-Muslim troops into a sacred site, harming of civilians at the site and damaging of the shrine during combat.

This cursory foray into Islamic just war theory has implications beyond the narrow topic of conflicts over holy sites in Iraq. The aftermath of September 11 has seen an anti-religious backlash in popular literature on religion and politics, aimed primarily at Islam.⁷⁴ The costs of this wholesale denunciation are prohibitive: We cannot both reject and expect to understand religion at the same time. This reluctance to take the study of religion seriously lies at the root of our inability to formulate policies and doctrines that are sensitive to the religious identities and needs of our audiences. The treatment of Muhammad al-Shaybani's "Book of Conduct" offers one compelling piece of evidence for this complacency: We have in our possession one of the most important Muslim texts on the conduct of war by one of the founders of the two schools of Sunni Islam practiced in Iraq today, and yet we cannot read it in its entirety because we have not bothered translating it.⁷⁵

By engaging with religious texts and sources, sacred ritual, iconography and space, as well as investigating theology and the structure of religious institutions, we can gain insights into the relationship between religion and politics that will continue to elude us as long as we persist in maligning or essentializing religion. 

NOTES

¹ I thank Hatem Bazian, Nora Bensahel, C. Christine Fair, Mohammed Hafez and David Patel for their comments and suggestions. I am particularly grateful to Amy Nelson for her research assistance.

² Jim Michaels, "Iraqi, U.S. forces Target Insurgents in 7 Mosque Raids; Operations Increase in Sunni Stronghold," *USA Today*, 13 October 2004, A1; Edward Wong, "U.S. Raids in 2 Sunni Cities Anger Clerics and Residents," *New York Times*, 13 October 2004, A12.

³ Richard A. Oppel Jr., "In Wake of Falluja, Pace of Combat Intensifies in Ramadi," *New York Times*, 14 November 2004, A13.

⁴ I have grappled elsewhere with possible tactical responses to the use of mosques by insurgents. See Ron E. Hassner, "Fighting Insurgency on Sacred Ground," *Washington Quarterly* 29, no. 2 (Spring 2006): 149-166.

⁵ Concepts such as "Western/Christian" or "Islamic" are anything but exclusive and are used here as a shorthand. Both schools of thought on just war theory draw on the Hebrew Bible for guidance. Moreover, several Christian scholars, primary among them Thomas Aquinas, were familiar with Muslim political philosophers, such as Al-Farrabi, Ibn Rushd (Averroës) and Abu Ali Sina (Avicenna) and drew on their insights in formulating their own thoughts on justice and war.

⁶ Kahl suggests that, on balance, U.S. troops have abided by the requirements of Western just war theory. I suspend judgment on this matter since my focus in this paper is on Islamic just war theory. Colin H. Kahl, "How We Fight," *Foreign Affairs* 85, no. 6 (November/December 2006): 83-101.

⁷ Yvonne Yazbeck Haddad, "Operation Desert Storm and the War of Fatwas," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, eds., Muhammad Khalid Masud, Brinkley Messick and David S. Powers (Cambridge, Mass.: Harvard University Press, 1996), 297-309; Christoph Reuter, "Suicide or Martyrdom? Modern Islam and the Feud of the Fatwas," in *My Life is a Weapon*, trans., Helena Ragg-Kirkby (Princeton: Princeton University Press, 2004), 115-129.

⁸ "Bukhari," in Gordon D. Newby, *A Concise Encyclopedia of Islam* (Oxford: OneWorld, 2002), 45; "Bukhari," in *Oxford Dictionary of Islam*, ed., John L. Esposito (Oxford: Oxford University Press, 2003), 46. For Bukhari's collection in English, see the USC-MSA Compendium of Muslim Texts, <http://www.usc.edu/dept/MSA/>.

⁹ "Shaybani," in *The Oxford Dictionary of Islam*, ed. John L. Esposito (Oxford, UK: Oxford University Press, 2003), 290; James Turner Johnson, *The Holy War Idea in Western and Islamic Traditions* (University Park: Pennsylvania State University Press, 1997), 143, citing Majid Khadduri, trans., *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: Johns Hopkins Press, 1966), 20.

¹⁰ The most influential studies of Islam and war in English draw extensively on Shaybani's texts. They are Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955); John Kelsay, *Islam and War: A Study in Comparative Ethics* (Louisville, Ky: Westminster/John Knox Press, 1993); and Johnson (1997).

¹¹ In addition to Bukhari's *Hadith* collection, Sunni Muslims consider collections by ibn al-Hajjaj, Ibn Maja, Abu Da'ud, al-Tirmidhi and al-Nasa'i to be authoritative. I also cite, below, from the *Hadith* collection of Ahmed ibn Hanbal. Alongside Shaybani, Ibn Rushd (Averroës), al-Farabi, Ibn Sina (Avicenna) and Ibn Khaldun are considered the primary Muslim just war philosophers.

¹² To some extent this honorific is self-conferred, since the unique status granted to the first and second generation of Muslim scholars and leaders derives from a *Hadith* collected by Bukhari in *Sahih al-Bukhari* 3, bk. 48, no. 819 and 820.

¹³ Kelsay, 60; Johnson, 143-4.

¹⁴ The other two schools of Islamic jurisprudence, the Hanbali and Maliki, are particularly popular in Saudi Arabia and Northern Africa, whereas most of the insurgents in Iraq associate with the Salafi tradition, which rejects all four of these schools.

¹⁵ Abd-al-Muhsin al-Ubaykan, "Exceptions to Jihad," *Al-Sharq al-Awsat*, 14 November 2004, in "Saudi Cleric Discusses 'Correct Position on Jihad'," trans. BBC Worldwide Monitoring, 16 November 2004; "Islamic State of Iraq Announces Issuing of Group's New 'Standard'," Jihadist Websites—OSC Report, 26 January 2007, Foreign Broadcast Information Service, <http://www.opensource.gov>; and "Alleged Bin Ladin Statement Offers Rewards for Killing UN, US, British Figures," Middle East – FBIS Report in Arabic, 6 May 2004.

¹⁶ "Hizballah's Nasrallah Discussed Domestic, Regional Issues," Al Safir (Internet Version), 29 April 2006, Foreign Broadcast Information Service, <http://www.opensource.gov>; "'Text' of Al-Zarqawi Message Threatening More Attacks," Iraq—FBIS Report in Arabic, 6 April 2004; "FYI—Comparison of Bin Ladin's Full Audio Message with Al-Jazirah.Net Text," Country—OSC Report, 27 April 2006, Foreign Broadcast Information Service, <http://www.opensource.gov>; "Al-Qa'ida-Affiliated Magazine Rejects 'Amnesty' Offered by Saudi Government," Saudi Arabia—FBIS Report in Arabic, 10 July 2004; "Insurgent Groups Unite, Form 'Jihad Reformation Front'," Jihadist Websites—OSC Summary, 4 May 2007, Foreign Broadcast Information Service, <http://www.opensource.gov>; "Ansar al-Sunnah Group Appeals to Sunnis to Support Palestinians in Iraq," Jihadist Websites—OSC Summary, 24 April 2007, Foreign Broadcast Information Service, <http://www.opensource.gov>; "Abu-Umar al-Baghdadi Views 'Dividends and Losses' after Four Years of 'Jihad'," Jihadist Websites—OSC Summary, 17 April 2007, Foreign Broadcast Information Service, <http://www.opensource.gov>; "Ansar al-Sunnah Group Asks Sunnis to Stay in Baghdad, Beware of 'Security Plan'," Jihadist Websites—OSC Summary, 16 February 2007, Foreign Broadcast Information Service, <http://www.opensource.gov>; "Jihadist Website Posts 'Communique' on Egyptian Islamic Group Joining al-Qa'ida," Jihadist Websites—OSC Report, 8 August 2006, Foreign Broadcast Information Service, <http://www.opensource.gov>; "Round-up of Middle East Friday Prayers for 31 Mar," Middle East—OSC Report, 3 April 2006, Foreign Broadcast Information Service, <http://www.opensource.gov>; and "Writer Commends 'Jurisprudent Opinions of Muslim Brotherhood Founder's Brother,'" Al-Sharq al-Awsat (Internet Version), 7 April 2006, Foreign Broadcast Information Service, <http://www.opensource.gov>.

¹⁷ Al-Sharq al-Awsat in OSC Translated Text, "Jailed Terrorist Urges Al-Zawahiri To Support Egypt's Al-Jihad 'Peaceful Course'," 7 May 2007.

¹⁸ These quotes appears often in Bukhari's collection attributed to various companions of the Prophet so as to attest to its authenticity. Bukhari, *Sahih al-Bukhari* 2, bk. 26, no. 795, 797 and 798; Bukhari 4, bk. 53, no. 391; Bukhari 8, bk. 73, no. 69; Bukhari 9, bk. 88, no. 199; Bukhari 9, bk. 83, no. 49; Bukhari 9, bk. 93, no. 539. It is worth pointing out that these verses are unanimous in prohibiting violence within Mecca and during the holy month (Dhul-Hijja) only, whereas the Saudi clerics extend the prohibition much more broadly. See also "Prominent Saudi Clerics Give Islamic Arguments to Denounce Bombings," SPA News Agency – BBC Monitoring Middle East, 24 June 2004; "Saudi Arabia: Islamic league chief says bombers 'murderers' under shari'ah law," SPA News Agency—BBC Monitoring Middle East, 14 May 2003; "World Muslim League head warns against disobeying authority," SPA News Agency—BBC Monitoring Middle East, 22 July 2004; and "Saudi Ulema's Shaykh Condemns Suicide Attacks; Killing of 'Infidels'," Al-Jazirah—BBC Monitoring Middle East, 12 June 2005.

¹⁹ "London Arabic Daily Reports on Conditions at Guantanamo Prison," Al-Sharq al-Awsat (Internet Version), 22 August 2006, Foreign Broadcast Information Service, <http://www.opensource.gov>.

²⁰ Study by the Defense Department's Combating Terrorism Center at West Point; See Soaud Mekhennet and Michael Moss, "In Lebanon, a New Face of Al Qaeda Emerges," *International Herald Tribune*, 16 March 2007, 1.

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²⁴ Edward Wong, "Once-Ruling Sunnis Unite to Regain a Piece of the Pie," *New York Times*, 12 January 2004, A10; Edward Wong and Dexter Filkins, "Shiite Leaders Reporting Progress in Talks on Najaf, But the Fiery Cleric Balks," *New York Times*, 13 May 2004, A13; Ian Fisher and Edward Wong, "Battles in Najaf and Karbala Near Shiites' Religious Sites," *New York Times*, 15 May 2004, A9; Edward Wong, "G.I.'s Report Killing 36 Insurgents Around Kufa Mosque That Held Arms," *New York Times*, 24 May 2004, A11; Robert F. Worth and Richard A. Oppel Jr., "Bombs Kill 4 Civilians and 2 Marines in Attacks in Iraq," *New York Times*, 29 November 2004, A10; Alan Feuer and Robert Hanley, "2 New York Area Firefighters Killed in Iraq," *New York Times*, 1 December 2004, B1; Robert F. Worth, "7 Marines and a G.I. Are Killed in Separate Attacks in Iraq," *New York Times*, 13 December 2004, A9; Dexter Filkins and Robert F. Worth, "U.S. Troops Set for Final Attack on Falluja Force," *New York Times*, 13 November 2004, A1; Thom Shanker and Eric Schmitt, "Falluja Data Said to Pressure Guerrillas," *New York Times*, 3 December 2004, A12; and Robert F. Worth, "Marines Find Vast Arms Cache in Falluja Leader's Mosque," *New York Times*, 25 November 2004, A22.

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²⁶ Richard A. Oppel Jr. and Dexter Filkins, "Iraqi Officials Plan to Extend Buying of Arms," *New York Times*, 18 October 2004, A1.

²⁷ "Tahara" and "Ablutions" in John Bowker, ed., *The Concise Oxford Dictionary of World Religions*, Oxford Reference Online, http://www.oxfordreference.com/views/BOOK_SEARCH.html?book=t101; "The Mosque and its Significance," Islam.com, <http://www.islam.com/salat/mosque.htm>.

²⁸ Bukhari 1, bk. 12, no. 812-815.

²⁹ Bukhari 8, bk. 73, no. 54.

³⁰ Bukhari 7, bk. 62, no. 118.

³¹ Ibid.; Faraz Rabbani, "Can non-Muslims Enter a Mosque? What Are the Conditions?" SunniPath: The Online Islamic Academy, 3 July 2005.

³² Here and throughout I use N.J. Dawood's translation of the Quran. *The Koran*, trans. N.J. Dawood (London: Penguin Classics, 1956), Sura 9:18 and Sura 9:28.

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³⁴ Bukhari 5, bk. 59, no. 658.

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⁴⁵ Moulana Abdul Quddus Hashmi, “Ka’aba Episode: A Historical Perspective,” *Islamic Order* 1, no. 4, (1979), 7-8.

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⁵² Johnson, 120.

⁵³ *The Quran*, Sura 2:191.

⁵⁴ Khadduri, chapter 2, sec. 114-117, 102.

⁵⁵ *Ibid.*, chapter 2, sec. 118-123, 102.

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⁵⁶ Kelsay, 59-67; Johnson, 116-127.

⁵⁷ William Tinning, "Bombs Fall at the Mosque; 40 Die as US Marines Launch Attack; Fighting Spreads to Six Cities," *The Herald*, 8 April 2004, 1.

⁵⁸ Richard A. Oppel Jr., "U.S. Apologizes for Baghdad Mosque Incident," *New York Times*, 15 August 2003, A12.

⁵⁹ Khadduri, chapter 10, sec. 1710, 279.

⁶⁰ Nonetheless, Salafis rely heavily on the interpretations of a 14th century Hanbali rival of Shaybani's, Taqi al-Din Ahmad ibn Taymiya and his students.

⁶¹ Karl Vick and Khalid Saffar, "Iraqi, U.S. Troops Invade Baghdad Mosque," *Washington Post*, 21 November 2004, A17; James Glanz and Richard A. Oppel Jr., "G.I.'s and Iraqis Raid Mosque, Killing 3," *New York Times*, 20 November 2004, A9.

⁶² Amy Schlesing, "39th Unit Sees Intense Fighting After Mosque Raid," *Arkansas Democrat-Gazette*, 21 November 2004.

⁶³ Eric Schmitt and Thom Shanker, "A Full Range of Technology Is Applied to Bomb Falluja," *New York Times*, 30 April 2004, A12.

⁶⁴ Robert McMahon, "Iraq: Laws Of War Tested Amid Battle Near Al-Najaf Holy Sites," *Radio Free Europe/Radio Liberty* (Prague), 12 August 2004.

⁶⁵ Edward Cody, "Armed Men Seize Mecca's Great Mosque," *Washington Post*, 21 November 1979; Edward Cody, "Saudis Press to End Siege at Mecca," *Washington Post*, 22 November 1979; and Edward Cody, "Saudis Capture Most of Gunmen Holding Mosque," *Washington Post*, 23 November 1979.

⁶⁶ "Fighting Continues at Moslem Shrine," Associated Press, 24 November 1979; Aly Mahmoud, "International News," Associated Press, 30 November 1979.

⁶⁷ Barry Shlachter, "Pakistani Troops Took Five Hours to Aid Embattled Embassy," Associated Press, 22 November 1979; and Stuart Auerbach, "Pakistanis Attack, Burn U.S. Embassy," *Washington Post*, 22 November 1979.

⁶⁸ William Powell, *Saudi Arabia and Its Royal Family* (Secaucus: Lyle Stuart Inc., 1982), 320. This incident is confirmed in part by David Holden and Richard Johns, *The House of Saud* (London: Sidgwick and Jackson, 1981).

⁶⁹ "Text Pronouncement Issued by the Ulema of the Kingdom of Saudi Arabia," BBC Summary of World Broadcasts, 26 November 1979; and "International News," Associated Press, 25 November 1979.

⁷⁰ Edward Cody, "Saudi Religious Leadership Advocates Strict Punishment for Mosque Siege," *Washington Post*, 26 November 1979; and "Saudi Troops Corner Last Extremists at Mosque," Associated Press, 26 November 1979.

⁷¹ "Saudi Arabian Embassy Denies Reports that French Anti-Terrorist Commandos Assisted Saudi Forces," *Washington Post*, 29 January 1980; Ghassan Salame, "Political Power and the Saudi State," in *The Modern Middle East: A Reader*, eds., Albert Hourani, Phillip S. Khoury and Mary C. Wilson (Berkeley: University of California Press, 1993), 586.

⁷² Major General William Caldwell, Defense Department News Briefing, CQ Transcriptions, 24 July 2006; Department of Defense U.S. Central Command Press Release, "1 Terrorist Killed, 2 Wounded, 5 Detained," 13 July 2006; Department of Defense U.S. Marine Corps News, "3/7 Marines Work Carefully While Searching Mosque," Defense Department Documents and Publications, 13 February 2006.

⁷³ Donald Macintyre, "On the Road to Najaf; Where They Vow to Die at the Martyr's Shrine," *Independent on Sunday*, 15 August 2004, 18.

⁷⁴ Three recent best-seller texts that best exemplify this trend are Sam Harris, *The End of Faith: Religion, Terror, and the Future of Reason* (New York: W.W. Norton and Co., 2004); Richard Dawkins, *The God Delusion* (Boston: Houghton Mifflin Co., 2006); and Christopher Hitchens, *God Is Not Great: How Religion Poisons Everything* (New York: Twelve Books, 2007).

⁷⁵ Majid Khadduri's translation, completed in 1966, has had a profound impact on the field of just war theory, yet it merely includes translations of excerpts from Shaybani's "Book of Conduct."

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