

‘NAY, WE OBEYED GOD WHEN
WE BURNED HIM’:
DEBATING IMMOLATION (*TAḤRĪQ*)
BETWEEN THE ISLAMIC STATE
AND AL-QĀ‘IDA

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INTRODUCTION¹

This chapter will study how the self-proclaimed caliphate calling itself the ‘Islamic State’ (henceforth by the acronym IS) justified burning to death the captured fighter pilot Mu‘ādh al-Kasāsba in 2015. Specifically, the chapter will study a legal work by IS’s foremost *salafī jihādī* propagandist Aḥlām al-Naṣr who – contrary to a long-established prohibition on immolation (*taḥrīq*) – permitted immolation as retribution for the fiery bombardment wrought by al-Kasāsba. Aḥlām al-Naṣr’s position will be demonstrated in a four-part study, beginning with delineating the scholarly campaign launched by IS in February 2015 to justify burning al-Kasāsba. Secondly, we will, in a close reading of her work, demonstrate how Aḥlām al-Naṣr (1) presented the punishment of retribution (*qiṣās*) as a defensive measure; (2) argued that IS did not burn a Muslim; and (3) bypassed the prohibition on immolation by arguing that the punishment did not impinge upon the sanctity of immolation, that the prohibition was never consensual and that public interest (*maṣlaḥa*) was ensured by burning al-Kasāsba. Thirdly, we will explore how the legality of immolation was debated within the *salafī jihādī* scholarly community by looking first at how the punishment was explained within IS, and secondly how immolation was debated between IS and al-Qā‘ida. Fourthly, and in conclusion, we will argue that Aḥlām al-Naṣr’s work

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may ultimately be seen as a critique of the position on violence in contemporary Islamic law that to IS is considered to be nothing but an appeasement to the West.

'WHAT IS THE RULING FOR BURNING AN INFIDEL TO DEATH?'

Captured on 24 December 2014 after performing an emergency landing in the Euphrates, Mu'adh al-Kasāsba was, in a film released by IS on 3 February 2015, theatrically paraded past a bombarded district in IS's de facto capital al-Raqqa. Dressed in an orange jumpsuit reminiscent of imprisoned *jihādīs* at Guantánamo and Abu Ghurayb, al-Kasāsba was placed inside an iron cage and made to watch as 'a commander of one of the districts (*qawāti*^c) bombed by the crusading coalition' set alight a petrol-doused trail leading to the cage, consequentially burning al-Kasāsba to death.² Finally, as the film was brought to an end, a bulldozer was seen covering al-Kasāsba's charred body with debris to the sound of a *nashīd* (hymn) singing: '[T]he bullets will ragingly burn, for retribution (*qiṣāṣ*) has come; where then may mortals find an escape from the sparks (*sharār*)?'³ Al-Kasāsba's immolation immediately sparked outrage across the Muslim world, and from the religious institution al-Azhar in Egypt to the clerical establishment in Saudi Arabia, scholars unanimously declared immolation unfounded in Islam. Yūsuf al-Qaraḏāwī (b. 1926), the influential exiled Azharī scholar, issued a *fatwā* that strongly rejected immolation, owing to the prophetic precept that 'if you shall kill, then kill in a kind manner (*idhā qataltum fa-aḥsinu al-qitla*)'.⁴ Similarly, when interviewed on the official call-in-and-get-a-*fatwā* programme *Yastaftūnak* (*They Seek Your Counsel*), a member of the prominent Council for Senior Scholars in Saudi Arabia, Sa'd al-Shathrī (b. 1967), assured the viewers

2. Mu'sassat al-Furqān, 'Shifa' al-ṣudūr', https://archive.org/details/islamicstate93_20151228_2339, 14:40–19:35. According to an article published in IS's magazine *Dābiq* in December 2014, Kasāsba was captured on 24 December 2015. This information was provided in a published transcript of the interrogation of Kasāsba shown in the videotaped execution – thereby suggesting that this recording (and possibly even the execution) occurred prior to the publication of the magazine in late-December 2014; see 'The Capture of a Crusader Pilot', *Dābiq* (1436/2014), 6, p. 34.
3. This is an excerpt from IS's famous hymn *Qarīban qarībā*; see Mu'sassat al-Ajnād, 'Qarīban qarībā', <https://archive.org/details/Qariba-234>, 2015 (accessed 10 June 2020). For accessed dates of online resources, see the Bibliography and the accompanying note, p. 366.
4. 'al-Qaraḏāwī yunaddid bi-qatl al-Kasāsba', <https://www.ereemnews.com/news/arab-world/201323>, 2015, p. 1.

that IS was not allowed to justify immolation by ‘picking a proof out of thin air’ (*lā yantiqū ‘an al-hawā’*) from either the Qur’ān or the Sunna.⁵

This condemnation was even echoed within the *salafī jihādī* scholarly community when Abū Muḥammad al-Maqdisī (b. 1959) – a scholar from Jordan historically aligned with al-Qā’ida⁶ – denounced the act of immolation as an ‘evil custom’ (*sunna sayyi’a*) invented by IS:

Yesterday, you [IS] were in the Ba’ath Party, torturing and slaughtering Muslims. And today, you are leading a caliphate? Yet, what kind of caliphate is this? [. . .] Every day they invent another reprehensible innovation (*bida’*): first the innovation of slaughter, and now, immolation. I say that this has nothing to do with Islam [. . .] How could they do this when the Prophet Muhammad, may God’s prayer and peace be upon him, explicitly said: ‘None may punish with fire except the Lord of Fire’ (*lā yu’adhdhib bi-l-nār illā rabb al-nār*)? [. . .] Also, they ranked the word of a man, the *shaykh al-islām* [an epithet for Taqī al-Dīn b. Taymiyya], above that of the Prophet Muḥammad, may God’s prayer and peace be upon him. Is this what they call Salafism?⁷

Speaking on national television on 6 February 2015, al-Maqdisī referred to al-Kasāsba’s videotaped execution that had ended with a quote by the medieval Ḥanbalī polymath Taqī al-Dīn Ibn Taymiyya (d. 728/1328), who equated exemplary retaliation (*al-tamthīl al-shā’i’*) with implementing the divinely prescribed penalties (*ḥudūd*) and waging *jihād*.⁸ However, al-Maqdisī not only decried that IS had invoked a statement by a fallible scholar to the detriment of a Sunnaic

5. ‘Ta’līq ma’ālī al-shaykh Sa’d al-Shatharī ‘alā ḥarq Mu’adh al-Kasāsba’, <https://www.youtube.com/watch?v=qPMDw6Gtsu4>, 2015, 3:53–7. For a survey of the opinions of establishment clergy in Saudi Arabia on IS, see Raihan Ismail, ‘Reclaiming Saudi Salafism: The Saudi Religious Circles and the Threat of ISIS’, *Journal of Arabian Studies* 9.2 (2020), 164–81.

6. For the authoritative study on al-Maqdisī, see Joas Wagemakers, *A Quietist Jihadi: The Ideology and Influence of Abu Muhammad al-Maqdisi* (Cambridge, 2012).

7. ‘Liqa’ ḥaṣarī li-qanā Ru’yā ma’ Abū Muḥammad al-Maqdisī’, <https://www.youtube.com/watch?v=XFh6gMKSGmA&t=2s>, 2015, 5:11–7:33.

8. For the unabridged statement, see Taqī al-Dīn Ibn Taymiyya, *Majmū’ al-fatāwa* (Beirut, 2011) III, pp. 223–4. Ibn Taymiyya elsewhere explicitly addressed immolation, saying: ‘Many a jurist has said that if a person murders by immolation, drowning, strangulation or the like that person must be exposed to what he did himself, although not by an act that in itself is prohibited, such as drinking alcohol or anal penetration. Among them are also some who say that there is no retaliation (*qawd*) except by the sword. However, the first opinion is more resembling (*ashbah*) of justice, the Book, and the Sunna’; see Ibn Taymiyya, *Majmū’*, III, pp. 28:381.

commandment not to ‘punish with fire’, but consequentially partook in a punishment the right to which was reserved exclusively for God. Thus, without explicitly saying it, al-Maqdisī alluded to IS’s major transgression: a crime of *shirk* (association) by equalling itself with God.

Shortly after al-Maqdisī’s televised rebuttal, IS responded with a refutation penned by the young *salafī jihādī* scholar Turkī al-Bin[°]alī (d. 2018) – a former protégé of al-Maqdisī’s who had shifted allegiances and was heading IS’s official Council for Research and Fatwās (Diwān al-Buhūth wa-l-Iftā[°]).⁹ Writing under the pseudonym Abū Khuzayma al-Muḍarī,¹⁰ al-Bin[°]alī reprimanded al-Maqdisī for slighting al-Kasāsba’s ‘blatant infidelity’, asking him why – ‘when denouncing slaughter and immolation’ – al-Maqdisī had not denounced the anchorman’s attribution of martyrdom (*shahīd*) on al-Kasāsba.¹¹ Apparently more concerned with refuting al-Maqdisī’s ‘seniority’ than justifying immolation, al-Bin[°]alī simply asserted that immolation was a ‘penalty of reciprocity’ (*al-mu[°]āqaba bi-l-tahrīq mumāthalatan*) in return for al-Kasāsba burning the townsfolk of al-Raqqa.¹² IS was, however, acutely aware that immolation was a matter of controversy, and so in an attempt to suppress criticism, on 4 February 2015 released a film endeavouring to show the everyday man’s contentment with burning al-Kasāsba. Thus, filming a crowd of onlookers watching the execution on a screen in downtown al-Raqqa, one man explained to the camera:

Look, [the pilot] launched missiles against children and lands of the Muslims, and so the method of execution (*ṭarīqat al-qatl*) must be immolation (*ḥarq*). This is more complaisant (*hādhā yusā’yir akthar*) [with God].¹³

9. Abu Usāma al-Gharīb, *al-Mukhtaṣar al-jalī bi-sīrat shaykhnā Turkī al-Bin[°]alī*, <https://archive.org/details/almokhtasar.algali.high>, 2013, p. 2.
10. Abū Khuzayma al-Muḍarī was identified as Turkī al-Bin[°]alī by [°]Abdullāh b. Aḥmad al-Ḥusaynī, *Wa-lā yawm al-ḥīn*, http://www.ilmway.com/site/maqdis/MS_7665, 2015, p. 6.
11. Quoted in al-Ḥusaynī, *Wa-lā yawm al-ḥīn*, p. 8.
12. Ibid., p. 28. [°]Abdullāh b. Aḥmad al-Ḥusaynī, who himself was a member of al-Maqdisī’s Shari‘a Council on the latter’s website Minbar al-Tawḥīd wa-l-Jihād, rebutted al-Bin[°]alī by correcting him that the position that ‘retaliation should not be sought except with the sword’ (*lā qawad illā bi-l-sayf*) had been authorised by the Ḥanbalīs and Ḥanafīs; see al-Ḥusaynī, *Wa-lā yawm al-ḥīn*, p. 28.
13. al-Maktab al-I‘lāmī, ‘Farḥat al-muslimīn bi-ḥarq al-ṭayyār al-[°]urdunī’, https://archive.org/details/oma_222_mail_050, 2015, 1:38–1:50. IS released a similar video on 12 February 2015, yet this time from Homs, where a young man displayed satisfaction with the punishment of immolation by simply reciting: ‘If you have to respond to an attack, make your response proportionate, but it is best to stand fast’ (Q16:126); see al-Maktab al-I‘lāmī

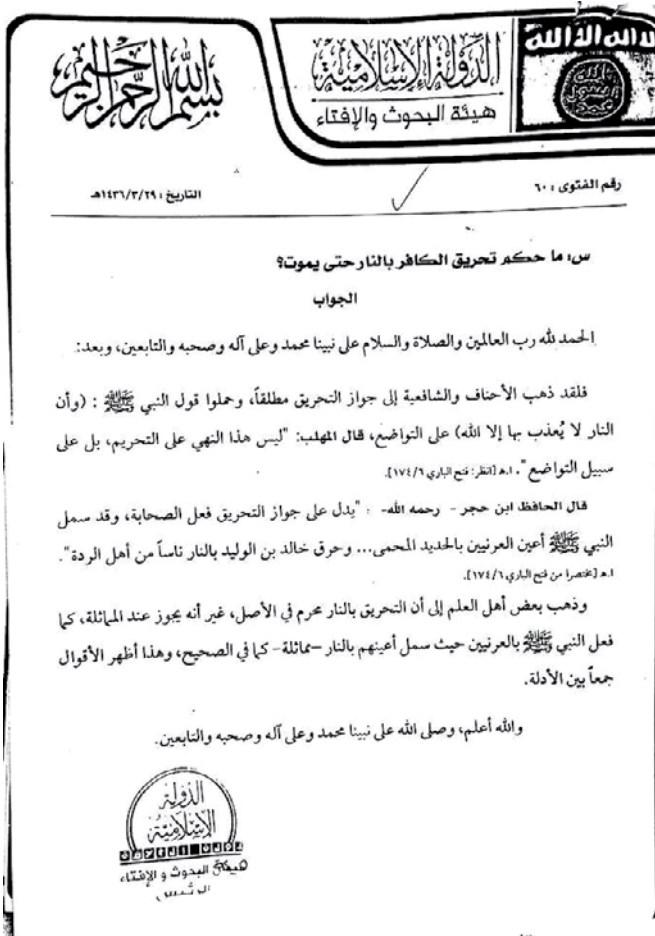


Figure 1 *Fatwā* justifying immolation issued by IS's Council for Research and Fatwas and distributed by IS in Syria and Iraq (photo by author)

IS had, however, even prior to the execution, been concerned with the legality of immolating al-Kasāsba. Thus, in a series of leaked legal documents (see Figure 1) dated two weeks prior to al-Kasāsba's immolation, a *fatwā* was unveiled (most likely authored by al-Bin[°]alī) answering the inquiry: '[W]hat is the ruling for burning an infidel (*tahrīq al-kāfir bi-l-nār*) to death?'. It concluded that

'Arā' al-muslimīn bi-harq al-ṭayyār al-urdunī', <https://archive.org/details/w.homs.araa.mouslimen.harq.tayyar.original.quality>, 2015, 2:11–2:19.

‘some scholars considered immolation principally prohibited, yet permitted in the case of reciprocity (*al-mumāthala*)’.¹⁴ Explaining how the punishment had not breached the sanctity of immolation, al-Bin^ʿalī adduced a story relating how the Prophet Muḥammad gouged out the eyes of a group of tribesmen from ʿUrayna in a ‘penalty of reciprocity’, and importantly so with ‘fire-heated iron’ (*bi-l-ḥadīd al-muḥammi*). Despite being repeated verbatim by IS’s official magazine *Dābiq* on 12 February 2015,¹⁵ al-Bin^ʿalī’s analogy was, however, not enough to allay concerns that IS had violated the sanctity of immolation. Thus, within the coming month IS’s unofficial publishing house al-Ghuraba³ li-l-I^ʿlām launched a major scholarly campaign to justify burning al-Kasāsba.

A dozen works (see Figure 2) written by some of IS’s foremost ideologues were released; one work, however, was surprisingly penned by a young woman by the name Shaymā³ Haddād (b. 1992), yet known more commonly by her pseudonym Aḥlām al-Naṣr. Published online on 13 February 2015, the work entitled *Nay, We Obeyed God When We Burned Him, You Slaves of the Luxurious Life* (*Bal ʿaṭʿanā allāh idh aḥraqanāhu ya ʿabīda al-rafāhiyya*) became IS’s lengthiest *apologia* ever written for burning al-Kasāsba.¹⁶ Rejecting the accusation that IS had transgressed a prohibition by burning al-Kasāsba, Aḥlām al-Naṣr posited a tripartite ruling stating that (1) retribution (*qiṣās*) was a defensive measure; (2) that al-Kasāsba was not a Muslim; and (3) that burning him was nothing short of applying *qiṣās* in return for al-Kasāsba’s incendiary bombardment of IS. Aḥlām al-Naṣr’s work aptly represented the legal reasoning permeating the campaign, and therefore serves as a proper point of departure for us for studying how IS justified burning al-Kasāsba.

Aḥlām al-Naṣr’s scholarly profundity was, however, not incidental. Born into a family of religious learning in Damascus in 1992, Aḥlām al-Naṣr’s grandfather, Muṣṭafā al-Bughā (b. 1938), was a prominent jurist in the Syrian Arab Republic who had taught at the Faculty of Sharīʿa at the University of Damascus before being appointed to the governmental Higher Council for Fatwās.¹⁷ Aḥlām

14. Hayʿat al-Buhuth wa-l-Iftāʿ, ‘Mā ḥukm taḥrīq al-kāfir bi-l-nār hatā yamūt?’, 2015 (see Figure 1), p. 1.

15. ‘The Burning of the Murtadd Pilot’, <https://jihadology.net/2015/02/12/al-hayat-media-center-presents-a-new-issue-of-the-islamic-states-magazine-dabiq-7/>, 2015, pp. 5–8.

16. For a translation of this work, see my forthcoming chapter, ‘Aḥlām al-Naṣr and the Islamic State’s Justification for Execution by Burning’, in *Islamic Law in Context: A Primary Source Reader*, eds Omar Anchassi and Robert Gleave (Cambridge, forthcoming).

17. Thomas Pierret and Mériam Cheikh, ‘“I Am Very Happy Here”: Female Jihad in Syria as Self-Accomplishment’, *Hawwa: Journal of Women of the Middle East and the Islamic World* 13.2 (2015), 241–69, here p. 248. Aḥlām al-Naṣr also signed *Nay, We Obeyed God When We Burned Him* with the pseudonym Umm Usāma al-Dimashqiyya, suggesting that



Figure 2 Some works justifying the legality of immolation released by al-Ghurabā^o li-l-^oIlām and al-Wafā^o; the top first from the right being Aḥlām al-Naṣr's (photo by author)

al-Naṣr's mother, Īmān al-Bughā, also received a doctoral degree in Syria, but had moved to Saudi Arabia to teach *fiqh* at the University of Dammām prior to joining IS in October 2014, taking up a judicial position alongside al-Bin^cālī.¹⁸ Aḥlām al-Naṣr, who accompanied her mother to al-Raqqa, soon became something of a court scholar with more than a dozen apologetic works released by IS in the period between 2014–19 – most notably a major compilation of poetry entitled *‘Uwār al-ḥaqq* (*The Blazing Truth*).

Nay, We Obeyed God When We Burned Him was to become, however, Aḥlām al-Naṣr's most legally oriented work published to date, and so even though not conforming to the scholarly scrupulousness typical of classical *fiqh*, the work certainly suggested a legal prowess beyond that expected of a lay Muslim.¹⁹ Likely authored in al-Raqqa,²⁰ the work confidently – albeit somewhat rudimentarily – engaged in a series of legal debates that were crucial in formulating criminal law in the medieval Muslim world. Aḥlām al-Naṣr's scholarly jargon, however, often turned polemical to the point of threatening to burn infidel children at a 'barbecue party' (*hafla shawā*).²¹ Yet, this combination of a coarse methodology and a vulgar rhetoric may indeed be the defining character, if not strength, of Aḥlām al-Naṣr's legal reasoning; a reasoning that in the end empowered her to surmount even the most adamant scholarly opposition – not least the prohibition on immolation, to which we now turn.

THE BEST DEFENCE IS . . . REVENGE!

Aḥlām al-Naṣr introduced her work by praising how IS had restored Islam according to 'the methodology of its ancestors' (*man nahaja abnā'ahu*) who – continuing her argument – 'neither slept from injustice nor accepted shame or

she was born in Damascus and had given birth or aspired to do so to a son named Usāma – likely in honour of the late leader of al-Qa'ida, Usāma b. Lāḍin (d. 2011). For more on Muṣṭafā al-Bughā, see Thomas Pierret, *Religion and State in Syria: The Sunni Ulama from Coup to Revolution* (Cambridge, 2013), p. 45.

18. Diwān al-Da'wa wa-l-Masājīd, 'Qissat mujāhid: al-duktūra Īmān Muṣṭafā al-Bughā', <http://www.aymennjawad.org/19132/the-archivist-stories-of-the-mujahideen-unseen>, 2016, p. 1.
19. Īmān al-Bughā emphasised her daughter's erudition, explaining how Aḥlām al-Naṣr was 'born with a dictionary in her mouth'; see Robyn Creswell and Bernard Haykel, 'Poetry in Jihadi Culture', in *Jihadi Culture: The Art and Social Practices of Militant Islamists*, ed. Thomas Hegghammer (Cambridge, 2017), p. 24.
20. This was suggested by a rare first-hand report describing how Aḥlām al-Naṣr saw people in al-Raqqa rejoice when IS burned al-Kasāsba; see Aḥlām al-Naṣr, *Bal 'aṭ'anā allāh*, p. 22.
21. Aḥlām al-Naṣr, *Bal 'aṭ'anā allāh idh aḥraqanāhu ya 'abīda al-raḥāhiyya*, <https://justpaste.it/je3o>, 1436/2015, p. 33.

humiliation'.²² Aḥlām al-Naṣr readily identified the ancestors with 'those believers' (*li-lladīna āmanū*) intimated at in Q42:39, and 'who when stricken with insolence defended themselves'.²³ Having demonstrated that the act of defending oneself (*intiṣār*) was integral to ancestral methodology – albeit without specifying what precisely 'insolence' (*baghy*) meant – Aḥlām al-Naṣr proceeded to quote an array of early and medieval exegetical authorities to establish that *intiṣār* was a retributive act of self-defence meant to dissuade the enemy from attacking Muslims. Aḥlām al-Naṣr, for example, quoted the early Ḥanafī jurist Abū Bakr al-Jaṣṣāṣ (d. 370/942) who argued that: '[T]he preponderant meaning (*ẓāhir*) of the verse suggests that retribution (*intiṣār*) is preferable in this circumstance. Do you not see how He compared [retribution] to performing the prayer and obeying God the Exalted?'.²⁴ While equating retribution with the obligation to perform the daily prayer, Aḥlām al-Naṣr took pain to clarify that *intiṣār* was not an act of aggression, but of self-defence. Aḥlām al-Naṣr quoted the Shāfi'ī scholar Ismā'īl b. Kathīr (d. 774/1373), who argued that the believers in Q42:39 'were neither weak nor humiliated, but able to seek retaliation (*intiḳām*)'. Aḥlām al-Naṣr's wish to prove *intiṣār*'s violent qualification became abundantly clear when she quoted the early Meccan jurist 'Abd al-Mālik b. Jurayj (d. 150/767) for saying that Q42:39 referred to none other than the Prophet Muḥammad, 'who defended himself with the sword (*yantaṣir bi-l-sayf*)'.²⁵ Aḥlām al-Naṣr concluded the commentary on Q42:39 by stating that retribution should 'not be sought in doltish peacefulness, self-abasement, or tears', asking who dared be 'so sharp-witted to say by the sword, but not by fire (*bi-l-nār*)?'.²⁶ Before we return to the question of how to legally carry out retribution, we must, however, first take a look at the idea of retaliatory punishment (*qīṣās*) in Islamic law.

Despite being mentioned as early as in the Code of Hammurabi (dating to the First Babylonian Dynasty),²⁷ the lex talionis was famously uttered by Moses (Exod. 2:23–5), and was much later – as acknowledged by Aḥlām al-Naṣr – paraphrased in Q5:45.²⁸ Defined in classical *fiqh* as a punishment of death or

22. Ibid., p. 5.

23. Q42:39's relative pronoun *alladhīna* (who) refers back to Q42:36's mention of 'those who believe and trust in their Lord'.

24. Aḥlām al-Naṣr, *Bal 'aṭ'anā allāh*, p. 6.

25. Ibid. This was quoted from Jalāl al-Dīn al-Suyūṭī, *al-Durr al-manẓūr fī tafsīr bi-l-ma'thūr* (Riyadh, 2015), VII, p. 358.

26. Aḥlām al-Naṣr, *Bal 'aṭ'anā allāh*, p. 6.

27. David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford, 2009), pp. 180–2.

28. This similarity between the Hebrew Bible and the Qur'ān was noted by Aḥlām al-Naṣr, *Bal 'aṭ'anā allāh*, p. 10.

bodily harm dealt against an offender in a manner equivalent to that suffered by the offended, the medieval scholarly community was divided on the question of how *qiṣāṣ* should be applied if the offender had murdered a person in an unlawful mode of slaying – e.g. by sodomy or drowning the victim in alcohol.²⁹ Thus, was the executioner himself to indulge in unlawful anal penetration or intoxication in order to faithfully carry out the punishment? Muwaffaq al-Dīn Ibn Qudāma (d.620/1223), the revered medieval Ḥanbalī jurist, was a purveyor of the majority opinion that the offender was always to be ‘slain by the sword’ and advanced the same prophetic precept as did al-Qaraḍāwī – namely, that ‘if you shall kill, then kill in a kind manner’.³⁰ Yet, a minority, represented by the Andalusian jurist Abū Muḥammad b. Ḥazm (d. 456/1064), argued that if one had murdered in an unlawful mode of slaying, the offender ought to be slain in a mode *as equal as possible* (e.g. by a rock or an arrow), albeit never unlawful.³¹ But what about immolation? What if the offender was a fighter pilot who had burned townsfolk in flames issuing from modern-day missiles? While we shall later return to this question, for now keep in mind that though carrying out *qiṣāṣ* in an unlawful mode of slaying was considered forbidden across the scholarly spectrum, what precisely constituted the unlawful still remained a disputed question. Holding on to that thought, we may return to Aḥlām al-Naṣr’s work.

Although demonstrating that defensive retribution is a legal obligation on par with the daily prayer imposed on IS, Aḥlām al-Naṣr had not yet equated *intiṣār* (or *intiḳām*) with *qiṣāṣ* nor established that the punishment was reciprocal. Thus, in order to do this, Aḥlām al-Naṣr proceeded to interpret the sequential verse, Q42:40:

Let evil be requited by an equal evil (*wa-jazāʿu sayyiʿatin sayyiʿatun mithluhā*), [though anyone who forgives and puts things right will get a reward from God. Surely, He does not like those who do wrong].

Failing to mention the bracketed part of the verse, Aḥlām al-Naṣr instead quoted an interpretation by the Mauritanian *salaḥī* scholar Muḥammad al-Amīn

29. Mahfodz Mohamed, ‘The Concept of Qisas in Islamic Law’, *Islamic Studies* 22.2 (1982), 80; see also Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge, 2007), pp. 38–9.

30. Muwaffaq al-Dīn b. Qudāma, *al-Mughnī* (Riyadh, 2013), XI, pp. 532–3.

31. Abū Muḥammad b. Ḥazm, *al-Muḥallā bi-l-āthār fī sharḥ al-mujallā bi-l-ikhtisār* (Beirut, 2016), XV, p. 245. For more on this debate, see Mohamed, ‘The Concept of Qisas in Islamic Law’, pp. 82–4.

al-Shinqīṭī (d.1973), who in the 1960s authored one of the most widely read commentary works (*tafsīr*) in the modern Muslim world.³² Al-Shinqīṭī was quoted commenting on Q42:40, which – faithful to the commentary work’s intertextual methodology – was explained with reference to Q2:194. Aḥlām al-Naṣr – as will we – quoted al-Shinqīṭī at length:

God commanded that an ‘evil be requited by an equal evil’ [Q42:40], but *qīṣāṣ* is not an evil (*ma^c anna al-qīṣāṣ laysa bi-sayyi³a*) as He also said: ‘If anyone commits aggression against you, attack him as he attacked you’ [Q2:194]. As is apparent (*kamā huwa ṣāḥir*), *qīṣāṣ* dealt against an aggressor can never in itself be an act of aggression (*i^ctida³*) as suggested by the resemblance between the wordings (*lafẓayn*) in [Q2:194 and Q42:40].³³

Aḥlām al-Naṣr now skilfully transformed *qīṣāṣ* from a discretionary punishment to a form of defensive war by appropriating al-Shinqīṭī’s link between Q40:42’s emphasis on reciprocal evil and the call to defend oneself in Q2:194.

This transformation became even more obvious when Aḥlām al-Naṣr argued – contrary to the position in classical *fiqh* – that *qīṣāṣ* was not meant as a mechanism to restrict the harm dealt against an offender, but to pre-emptively deter him, or in her own words: ‘[T]o repel through chastisement and disciplinary punishment’.³⁴ Aḥlām al-Naṣr substantiated this assertion by quoting Ibn Kathīr, who explained that ‘if a murderer knows he is about to proceed with a murder, yet abstains from the act, there is life to be saved for mankind in this [very act of abstinence]’³⁵ – a reference to the qur’ānic injunction that ‘there is life for you in *qīṣāṣ*’ (Q2:179). Similar to Aḥlām al-Naṣr’s portrayal of *qīṣāṣ* as an instrument of defensive war, Soheil Hashmi has explained how al-Qā’ida was always careful to portray their ‘war’ as a defensive *jihād* in order to relax any legal restraint imposed on the classical expansionist *jihād* – e.g. the obligation to prevent collateral damage or the prohibition on suicidally ‘rushing into combat’.³⁶ Thus, by repeatedly

32. Muḥammad al-Amīn al-Shinqīṭī’s commentary work ‘*Adwā’ al-bayān fī idāḥ al-Qur’ān bi-l-Qur’ān*’ was published sequentially in nine volumes between March 1963 and September 1976 in Cairo. For a study on this work and al-Shinqīṭī, see my article in preparation, ‘From Mauritania to Medina: Muḥammad al-Amīn al-Shinqīṭī (d. 1973) and the Search for a Salafī Hermeneutics’.

33. Aḥlām al-Naṣr, *Bal ‘aṭ‘anā allāh*, p. 7. This was quoted from al-Shinqīṭī, ‘*Adwā’ al-bayān fī idāḥ al-Qur’ān bi-l-Qur’ān*’ (Beirut, 2013), II, p. 955.

34. Aḥlām al-Naṣr, *Bal ‘aṭ‘anā allāh*, p. 12.

35. Ibid. This was quoted from Ismā‘īl b. Kathīr, *Tafsīr al-Qur’ān al-‘aẓīm* (Dammam, 2019), I, p. 212.

36. Soheil Hashmi, ‘9/11 and the Jihad Tradition’, in *Terror, Culture, Politics: Rethinking*

emphasising how immolation was ‘less than he deserved’ (*aqall mā yastaḥiqquhu*) and carried out in ‘a reduced manner’ (*bi-shakl muṣaghghar*), Aḥlām al-Naṣr similarly widened IS’s legal window of action, and allowed herself to completely overlook the thorny question of how to treat prisoners of war – the subject of which is a major concern in both medieval and modern Islamic law.³⁷ Moreover, although the requirement of the defendant’s admission of guilt was fulfilled by al-Kasāsba’s published (yet likely forced) confession in *Dābiq* in December 2014,³⁸ nowhere did Aḥlām al-Naṣr mention the classical stipulation that either a pardon or a payment of blood money (*diyya*) could have absolved al-Kasāsba.³⁹ This latter possibility was even explicitly discarded by a fellow propagandist with the pseudonym °Ahd, who in a work entitled *Mu°ādh’s Burning Under the Microscope* (*Ḥarq Mu°ādh taḥt al-mijhar*) argued that al-Kasāsba’s immolation exonerated IS from the accusation of ‘taking lightly the blood of the Muslims’.⁴⁰ Thus, rather than portraying al-Kasāsba as a lapsed believer who had committed a punishable crime, Aḥlām al-Naṣr – as we shall now see – was more concerned with convincing the reader that IS had not burned a Muslim.

FORMULATING A RADICAL THEOLOGY OF FAITH

Daniel Lav has demonstrated that what makes a Muslim truly a Muslim has been, and still remains, a defining question in contemporary Jihadism. Thus, questions concerning the indivisibility of faith, whether acts are required for belief, and if so, whether *takfīr* (excommunication) may be pronounced on a Muslim who has committed a sin (minor or major) or act of unbelief, have pitted the *salafī jihādī* community against itself since the 1960s.⁴¹ Similarly, the sheer

9/11, eds Daniel J. Sherman and Terry Nardin (Bloomington, 2006), p. 154. This was also an interpretive strategy employed by al-Maqdisī; see Wagemakers, *A Quietist Jihadi*, p. 71.

37. For the profundity of this issue, see Muhammad Munir, ‘Debates on the Rights of Prisoners of War in Islamic Law’, *Islamic Studies* 49.4 (2010), 463–92; and Lena Salaymeh, ‘Early Islamic Legal-Historical Precedents: Prisoners of War’, *Law and History Review* 26.3 (2008), 521–44. As pointed out to me by Nathan French, the concern for the principle of *a maiore ad minus* – from the greater to the lesser – also greatly affected the radical *salafī* scholar Ḥamūd al-Shu°aybī (d. 2001), who would explain how the ‘modern’ variety of martyrdom-seeking (such as suicide bombing) was a *lesser* form of violence than that used in the medieval period; see Nathan French, *And God Knows the Martyrs: Martyrdom and Violence in Jihadi-Salafism* (Oxford, 2020), pp. 168–9.

38. ‘The Capture of a Crusader Pilot’, p. 34.

39. Peters, *Crime and Punishment in Islamic Law*, pp. 44–6.

40. °Ahd, *Ḥarq Mu°ādh taḥt al-mijhar*, 2015, p. 6.

41. Daniel Lav, *Radical Islam and the Revival of Medieval Theology* (Cambridge, 2012), p. 4.

space devoted to delineating al-Kasāsba's apostasy betrays Aḥlām al-Naṣr's awareness of the sensitivity of the subject. Thus, one might ask, why bother excommunicating al-Kasāsba? Why not simply charge him for murder – that is, as a *compos mentis* Muslim? To me, the answer quite simply is that it was easier for Aḥlām al-Naṣr to justify burning an infidel than a Muslim. As we shall see, Aḥlām al-Naṣr claimed that al-Kasāsba's enrolment in an infidel army consequentially transformed him into an infidel himself, thereby pigeonholing him with the excommunicated Āl al-Salūl. This historical designation was ultimately Aḥlām al-Naṣr's justification for arguing that IS did not burn a Muslim, but rather a descendent of the archetypical *murtadd-cum-kāfir*, °Abdullāh b. Salūl (d.9/631). Aḥlām al-Naṣr's exegetical starting point was, however, somewhat different, and began with a commentary on Q5:51:

You who believe, do not take the Jews and Christians as allies (*awliyā'*). They are allies only to each other. Anyone who takes them as an ally becomes one of them (*wa-man yatawalla-hum min-kum fa-innahu min-hum*). Surely, God does not guide the wrongdoers.

Q5:51 had historically posed three exegetical questions to the scholars of the medieval Muslim world: (1) who are the Jews and Christians that a Muslim must not take as *awliyā'*? (2) what does the pronoun *awliyā'* actually mean; and (3) what are the legal ramifications for a Muslim who had *yatawallā* with a Jew or a Christian? These were also the very three questions that directed Aḥlām al-Naṣr's exegesis, and for that reason we will, in the following, make Aḥlām al-Naṣr answer each question in turn.

As part of the effort to identify the Jews and Christians whom a Muslim may not take as *awliyā'*, Aḥlām al-Naṣr turned to al-Jaṣṣās, who in a commentary on Q5:51 argued that God:

prohibited in these verses allying oneself with the infidels (*kuffār*) and showing hospitality to them. He commanded that they be affronted and humiliated just as He prohibited the act of seeking help from them in any matter concerning the Muslims.⁴²

Aḥlām al-Naṣr did not comment upon the quotation, suggesting that she was in agreement with al-Jaṣṣās, who – writing in the tenth century Abbasid

42. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 15. This was quoted from Abū Bakr al-Jaṣṣās, *Aḥkām al-Qurʿān* (Beirut, 1992), IV, p. 293.

Caliphate – held that Jews and Christians were infidels, and for that simple reason prohibited allying with, showing hospitality to, or seeking help from a Jew or a Christian. Yet what Aḥlām al-Naṣr neglected to mention was that al-Jaṣṣās’s exposition was part of a larger effort to delimit the circumstances under which Christians and Jews could actually live *amicably* alongside Muslims in medieval Baghdad.⁴³ Mohammad Khalil has accordingly noted how IS would often promote a minority opinion, albeit in an ‘incomplete or misleading manner’, to the status of consensus in order to claim a spot for their peripheral opinion in Islam.⁴⁴ Similarly, by decontextualising al-Jaṣṣās’s interpretation, Aḥlām al-Naṣr conveniently avoided the question of whether Q5:51 referred generically to all Jews and Christians (regardless of time and place), or solely to those Jews and Christians inimical to the Prophet Muhammad when Q5:51 was revealed to him in Medina.

Aḥlām al-Naṣr decided to strengthen her ahistorical interpretation by turning to a familiar ally, and so al-Shinqīṭī was once again summoned to comment on Q5:51:

[God] in this beneficent verse said that any Muslim who takes Jews or Christians as allies will due to allying with them become one of them. He also clarified in another place that some actually did take them as allies, which was the cause for the infinite duration of torment [they would receive in their graves] and the displeasure of God. They even took them as allies after having turned Muslims as the Exalted said: ‘You see many of them allying (*yatawallawn*) with those who have disbelieved (*alladhīna kafarū*)’ [Q5:80].⁴⁵

Although quoting al-Shinqīṭī might seem like an odd option considering the latter’s proximity to the clerical establishment in Saudi Arabia – whose royal family has frequently been declared infidel by IS⁴⁶ – this, on closer scrutiny, is not necessarily odd at all. Simon Wolfgang Fuchs, for example, noted how the *jihādī* scholar Sayyid Imām al-Sharīf’s (b. 1950) broad reading of the scholarly tradition was an attempt to position himself squarely within the bounds of

43. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 15.

44. Mohammad Hassan Khalil, *Jihad, Radicalism, and the New Atheism* (Cambridge, 2017), p. 86.

45. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 15. This was quoted from al-Shinqīṭī, *ʿAdwāʾ al-bayān*, I, p. 412.

46. Cole Bunzel, ‘Wahhabism, Saudi Arabia, and the Islamic State: ‘Abdullah Ibn Jibrin and Turki al-Bin’ali’, in *Salman’s Legacy: The Dilemmas of a New Era in Saudi Arabia*, ed. Madawi Al-Rasheed (London, 2018), p. 195.

orthodoxy.⁴⁷ Likewise, for al-Qāʿida, ‘the credibility of the source and context is less important than the nature of the message being pinpointed’, with the result that they could paraphrase a medieval alcohol-consuming poet in a work on modest behaviour.⁴⁸ Similarly, one could say, by appropriating the opinion of ‘a pay-roll scholar’ like al-Shinqīṭī, Aḥlām al-Naṣr was able to prove to the reader – and herself, one may add – that IS’s interpretation was shared by a scholar who, by many in the *salafī* movement, is regarded as a foremost authority in the Muslim world.

Moving on to the second question, Aḥlām al-Naṣr glossed that the verb *yatawallā* did not merely mean fighting on behalf of infidels, but indeed any act of ‘serving or pleasing them’.⁴⁹ Johanna Pink has shown that despite the widely held belief that the Jews and Christians mentioned in Q5:51 were infidels, a majority of scholars in the modern period still held that the verse did not call for hostility against non-Muslims.⁵⁰ Although never mentioning the relation, Aḥlām al-Naṣr’s discussion of *yatawallā* was also semantically and ideationally related to the concept of *al-walāʾ wa-l-barāʾ* (loyalty and disavowal) that had been transformed by al-Maqdisī, who shifted the emphasis from condemning wrongful *walāʾ* to apply violent *barāʾ* against infidel rulers of the Muslim world.⁵¹ However, contrary to both mainstream and radical scholarship, Aḥlām al-Naṣr did not distinguish between the different forms of interaction that could occur between an infidel and a Muslim. Nāṣir al-Fahd (b. 1968), a *salafī* scholar from Saudi Arabia aligned with al-Qāʿida, by contrast distinguished between permissible interaction (*muʿāmalā jāʾiza*), assistance (*muwālat*) and alliance (*tawallī*), while arguing that only the latter qualified as unbelief (*kufr*).⁵² This graduation

47. Simon Wolfgang Fuchs, ‘Do Excellent Surgeons Make Miserable Exegetes? Negotiating the Sunni Tradition in the *jihadi* Camps’, *Die Welt des Islams* 53.2 (2013), pp. 192–237, 202. This is not much different from how al-Binʿalī in a study of the legality of man-made law favoured an opinion made by the former Grand Mufti in Saudi Arabia, Muḥammad b. Ibrāhīm (d. 1969); see Bunzel, ‘Wahhabism, Saudi Arabia, and the Islamic State’, p. 195. This trend was also noted by Michael Cook, *Ancient Religions, Modern Politics: The Islamic Case in Comparative Perspective* (Princeton, 2014), pp. 385–6.

48. Elisabeth Kendall, ‘Jihadist Propaganda and its Exploitation of the Arab Poetic Tradition’, in *Reclaiming Islamic Tradition: Modern Interpretations of the Classical Heritage*, eds Elisabeth Kendall and Ahmad Khan (Edinburgh, 2016), p. 233.

49. Aḥlām al-Naṣr, *Bal ʾaṭʾanā allāh*, p. 15.

50. Johanna Pink, ‘Tradition and Ideology in Contemporary Sunnite Qurʾanic Exegesis’, *Die Welt des Islams* 50.1 (2010), pp. 3–59, here p. 44.

51. Wagemakers, ‘The Transformation of a Radical Concept: *al-walaʾ wa-l-baraʾ* in the Ideology of Abu Muḥammad al-Maqdisī’, in *Global Salafism: Islam’s New Religious Movement*, ed. Roel Meijer (London, 2009), pp. 95–7.

52. Justyna Nedza, ‘The Sum of its Parts: The State as Apostate in Contemporary Saudi

was not specified by Aḥlām al-Naṣr, who merely posited that the act of *yatawallā* was categorical: '[A] person is either a believer or an infidel (*fa-l-nās immā mu'min wa-immā kāfir*)'.⁵³

Having answered the first and second question, Aḥlām al-Naṣr proceeded to answer the third: what are the legal ramifications of allying oneself with an infidel? Historically, scholars in the medieval period were acutely aware that Q5:51's phrase 'becomes one of them' (*min-kum fa-inna-hu min-hum*) could *literally* mean that a Muslim became either Jew or Christian. Al-Jaṣṣāṣ accordingly favoured that Q5:51 be read metaphorically, and so rather than enjoying the protected status granted to Jews and Christians, a Muslim who had allied with an infidel became an apostate (*murtadd*) apart from the protected 'People of the Book' (*ahl al-kitāb*).⁵⁴ Aḥlām al-Naṣr was equally determined to prove that al-Kasāsba had not *literally* turned into a Jew or a Christian – thereby becoming an infidel by birth (*kāfir aṣli*) – but instead turned into something much worse: an infidel by choice. However, in order to conclusively answer the third question, Aḥlām al-Naṣr proceeded to present the *sabab al-nuzūl* (occasion for revelation) material that occasioned Q5:51.

Aḥlām al-Naṣr quoted a report attributed to the companion ʿUbāda b. Ṣāmit (d. 34/656), explaining why, how and when Q5:51 was revealed. This report told the story of the controversial companion ʿAbd Allāh b. Ubayy (d. 9/631) – derogatorily referred to by the maternal *nasab* Salūl⁵⁵ – who despite claiming allegiance to the Prophet Muḥammad was accused of cooperating with the Jews in Medina. Thus, when another companion went to the Prophet Muḥammad to disclaim association with the very Jews whom Salūl cooperated with, Q5:51 was purportedly revealed to the Prophet Muḥammad.⁵⁶ Due to the lip-service paid to the latter, Salūl was to become the *munāfiq* (hypocrite) par excellence in the

Militant Islamism', in *Accusations of Unbelief in Islam: A Diachronic Perspective on Takfir*, eds Camilla Adang et al. (Leiden, 2015), p. 314. This position was also favoured by Jordanian *salafi-jihādi* scholar Abū Qatāda al-Filastīnī (b. 1960); see Lav, *Radical Islam and the Revival of Medieval Theology*, pp. 180–1. For a biography of Nāṣir al-Fahd, see Thomas Hegghammer, *Jihad in Saudi Arabia: Violence and Pan-Islamism since 1979* (Cambridge, 2010), pp. 87–9.

53. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 10.

54. al-Jaṣṣāṣ, *Aḥkām al-Qurʿān*, IV, p. 100.

55. Naming according to one's maternal *nasab* (lineage) rather than paternal one was traditionally perceived as patronising, merely adding to the choice of Aḥlām al-Naṣr's derogatory designation; see Patricia Crone, *God's Rule: Government and Islam* (New York, 2004), p. 159.

56. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 16. This was quoted from al-Suyūṭī, *al-Durr al-manthūr*, III, p. 98.

medieval scholarly tradition, and so Aḥlām al-Naṣr readily adduced the derogatory label, Āl al-Salūl. This was, however, inarguably a synonym for the scholarly establishment in Saudi Arabia, whose loyalty to the royal family – known as Āl Saʿūd – was a frequent subject of scorn for Aḥlām al-Naṣr:

What's the matter with you, Family of Salūl, you who pretend to possess wisdom!
All you do is brag and falsely claim to speak the truth! Why did you not cry
before [we burned al-Kasāsba]? Why did you not bemoan the crimes of your
tyrant rulers, you, Family of Salūl?⁵⁷

Pigeonholing al-Kasāsba together with the Āl al-Salul, Aḥlām al-Naṣr seemed to argue that when you nominally appear to be a Muslim, yet at the same time neglect the very community to which you hypocritically claim to belong, you qualify as a member of the Āl al-Salūl.

Aḥlām al-Naṣr was certainly not the first *salafī jihādī* scholar to put forth this contention, but was indebted to an argument of causality connecting hypocrisy (*nifāq*) with apostasy (*ridda*) that had a particularly violent intellectual history in contemporary Jihadism. Justyna Nedza, who studied the novel idea of *takfīr* directed at a non-singular entity – e.g. a state or institution – noted that al-Fahd in the 1990s worked according to a chain of causality in which ‘hypocrisy leads to non-permissible association with the unbelievers (*tawallī*) which in turn leads to apostasy’.⁵⁸ Thus, the only remedy against apostasy was, according to al-Fahd, to shun hypocrisy and remain faithful to Islam. But, while one could do so by, for example, purifying one’s creed or avoiding public employment, the only way to steer clear of hypocrisy according to Aḥlām al-Naṣr was to ‘show hostility towards the infidels’.⁵⁹ Thus, in contrast to the position favoured by al-Fahd, Maqdisī⁶⁰ and Safar al-Ḥawālī⁶¹ (b. 1960) – to mention but a few – Aḥlām al-Naṣr’s uncompromising requirement of hostility was a product of a radical theology of faith that emerged during al-Qāʿida’s heyday in Iraq.

Thus, when the Taliban (Ṭālibān) Movement in the 1990s decided to form a wider fighting coalition in Afghanistan, their political (not to mention theological) pragmatism had sparked a heated debate within the burgeoning *salafī jihādī* community in Jordan. Abū Musʿab al-Zarqāwī (d. 2006), the late leader of al-Qāʿida in Iraq, favoured the minority position of declaring any member of the

57. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 20.

58. Nedza, ‘The Sum of its Parts’, p. 319.

59. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 17.

60. Wagemakers, *A Quietist Jihādī*, p. 154.

61. Safar al-Ḥawālī, *Zāhirat al-irjāʿ fī-l-fikr al-islāmī* (Cairo, 1417/1996), I, pp. 299–302.

pragmatist Taliban non-Muslim, while al-Zarqāwī's former teacher, al-Maqdisī, represented the majority position that the Taliban could not afford to apply 'a pure theology, unmediated by jurisprudence' in the bid to rule Afghanistan.⁶² Furthermore, claiming that faith (*imān*) was a single entity – either entirely present or entirely absent – was, according to the *salafī jihādī* scholar Abū Qatāda al-Filastīnī (b. 1960), akin to reviving the heretical dogma of the zealous *khawārij*, who in the period following the death of the Prophet Muḥammad forcefully argued that the negation or affirmation of a part entailed the negation or affirmation of the whole – such as the belief in Islam.⁶³ This was also why al-Maqdisī safely interpreted Q5:51 to refer to a state – and not an individual – thereby allowing himself to declare an infidel ruler an 'idol of infidelity' (*tāghūt al-kufr*), while concomitantly arguing that the 'idol's helper' (*nāṣir al-tāghūt*) – e.g. a government employee or conscript – was still truly a Muslim.⁶⁴

Aḥlām al-Naṣr was, however, no doubt heir to al-Zarqāwī's minority position and was for this reason unconcerned with delineating penal differentiation – e.g. the right to repent (*istiṭāba*), the prerequisite of having good faith (*ḥusn al-islām*) prior to one's apostasy, or the stipulation that punishment should be contingent on whether the apostate poses a societal threat – that historically caused jurists to suspend judgement on cases of apostasy.⁶⁵ Similar to the application of law by Ḥarakat al-Shabāb al-Mujāhidīn in Somalia, Aḥlām al-Naṣr could be said to 'overlook the strict traditional rules of evidence and procedural requirements' in the belief that enforcing punishment was more religiously rewarding than abiding by the classical 'canon of doubt' that demanded one to avoid punishment in the slightest presence of doubt.⁶⁶ In light of this observa-

62. Lav, *Radical Islam and the Revival of Medieval Theology*, pp. 178–9.

63. Abū Qatāda al-Filastīnī, *Thiyāb al-khalīfa*, <https://archive.org/details/thiyab-alkhalifa>, 1435/2014, p. 25. For more on the rhetorical appropriation of the *khawārij*, see Jeffrey T. Kenney, *Muslim Rebels: Kharijites and the Politics of Extremism in Egypt* (Oxford, 2006), and Wagemakers, "'Seceders" and "Postponers"? An Analysis of the "Khawarij" and "Murji'a" Labels in Polemical Debates Between Quietist and Jihadi-Salafis', in *Contextualising Jihadi Thought*, eds Jevan Deol and Zaheer Kazmi (London, 2012).

64. Wagemakers, *A Quietist Jihadi*, pp. 92–3.

65. This is evident in the dearth of reported death penalties against apostates in the medieval and modern period, despite the dominant legal position that the punishment for apostasy is death; see David Cook, 'Apostasy from Islam: A Historical Perspective', *JSAI* 31 (2006), 248–88, here p. 255; and Rudolph Peters and Gert de Vries, 'Apostasy in Islam', *Die Welt des Islams* 17.1 (1976/7), 1–25, here pp. 5, 13. Apart from the sinner's right to repent, Safar al-Ḥawālī also mentioned the requirement that a sinner must be aware of having committing a sin prior to being declared an apostate; see al-Ḥawālī, *Zāhirat al-irjā' fī-l-fikr al-islāmī*, II, pp. 627–8.

66. Michael Skjelderup, 'Hudūd Punishments in the Forefront: Application of Islamic

tion, Aḥlām al-Naṣr was simply more concerned with passing judgement and convincing the reader that al-Kasāsba was not a Muslim. Then, having claimed IS's right to defend itself by *qiṣāṣ* and apostatised al-Kasāsba, Aḥlām al-Naṣr was now ready to circumvent the last major impediment: the prohibition on immolation.

'ONLY GOD MAY PUNISH WITH FIRE'

Humankind has, whether on earth or in the hereafter, throughout *Heilsgeschichte* been threatened with the punishment of fire by God. Thus, when Aaron's sons, Nadab and Abihu, sacrificed 'alien fire' to YHWH they were punished as 'fire came forth from YHWH and consumed them; thus they died at the instance of YHWH' (Lev. 10:2). Similarly, the Qur'ān abounds with descriptions of fiery punishment, including how those who dwell in Hell (*aṣḥāb al-nār*, literally 'the people of fire') will burn on Judgement Day (Q104) – a motif that has also frequently been brought up in the eschatological literature reproduced by IS.⁶⁷ However, despite being described in medieval *fiqh* manuals as a mode of slaying reserved exclusively for God, the divine prerogative of immolation did not always deter mankind from partaking in the punishment of God.⁶⁸ Hence, not only is immolation attributed to the early caliphs Abū Bakr al-Ṣiddīq (d. 13/634) and °Alī b. Abī Tālib (d. 21/661),⁶⁹ but immolation was also intermittently practiced

Criminal Law by Harakat al-Shabab al-Mujahideen', *Journal of Law and Religion* 29.2 (2014), pp. 317–29, here p. 327; for a historical study of the 'doubt canon', see Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge, 2015), particularly pp. 258–9.

67. For similar examples, see Q4:30, Q9:6, Q25:14 and Q40:71–2. For more on immolation in the hereafter, see Christian Lange, *Paradise and Hell in Islamic Traditions* (Cambridge, 2015), pp. 46–7; and Nerina Rustomji, *The Garden and the Fire: Heaven and Hell in Islamic Culture* (New York, 2013), pp. 79–83. For IS's employment of the eschatological imagery of fire, see Bronislav Ostranský, *The Jihadist Preachers of the End Times: ISIS Apocalyptic Propaganda* (Edinburgh, 2019), p. 104.
68. While there is no mention of the punishment of immolation being carried out by people in the Qur'ān, immolation was mentioned as a capital punishment for adultery and sacrilege in the Hebrew Bible (see Gen. 38:24, Lev. 21:9 and Lev. 20:14). For a study on immolation in ancient Israel, see Shaul Bar, 'The Punishment of Burning in the Hebrew Bible', *Old Testament Essays* 25.1 (2012), 27–39. Even earlier, immolation was likely a punishment in ancient Egypt; see Anthony Leahy, 'Death by Fire in Ancient Egypt', *Journal of the Economic and Social History of the Orient* 27.2 (1984), 199–206.
69. For a survey of incidents of immolation in the Rashidūn Caliphate, see Joel L. Kraemer, 'Apostates, Rebels, and Brigands', *Israel Oriental Studies* 10.1 (1980), 34–74, here pp. 44–6; and Lange's entry 'Immolation', *EI3* (Leiden, 2017), p. 149.

as a capital punishment in the Umayyad and later Saljuq period, continuing well into thirteenth century Iraq and Khurāsān and even the Ottoman Empire.⁷⁰

Yet around the early medieval period we begin to see the contours of an *ijmāʿ* (scholarly consensus) prohibiting immolation in the Muslim world. Thus, even while condoning immolation as ‘the right of [the ruler] (*fa-lahu dhālika*)’, the Ḥanbalī polymath Ibn Qayyim al-Jawziyya (d. 751/1359) still sensed the otherworldliness of the punishment, describing how homosexuals ‘had tasted the heat of fire on earth before the hereafter’ when burned by Abū Bakr al-Ṣiddīq.⁷¹ Averroes (d. 595/1198), the acclaimed Andalusian polymath, summarised the nascent *ijmāʿ*, observing that while a minority considered immolation permitted – ‘if the perpetrator had initiated the act’ – a majority counted immolation prohibited with reference to the very same *ḥadīth* cited at the outset by al-Maqdisī.⁷² Averroes explained:

This is the reason for the disagreement: a general rule standing in opposition to a particular rule (*muʿāraḍat al-ʿumūm li-l-khuṣūṣ*). About the general rule the Exalted said, ‘wherever you find the idolaters (*al-mushrikīn*), kill them’ [Q9:5], without precluding any mode of slaying. However, a particular rule was established when the Messenger of God, may God’s prayer and peace be upon him, told someone: ‘When you find a person, kill him, but do not burn him. None may punish with fire except the Lord of Fire’ (*fa-innahu lā yuʿadhdhib bi-l-nār ʾillā rabb al-nār*).⁷³

70. Andrew Marsham, ‘Attitudes to the Use of Fire in Executions in Late Antiquity and Early Islam’, in *Violence in Islamic Thought: From the Qurʾān to the Mongols*, eds Robert Gleave and István Kristó-Nagy (Edinburgh, 2015), pp. 117–18; and Lange, *Justice, Punishment, and the Medieval Muslim Imagination* (Cambridge, 2008), pp. 68–9. Lange noted how one public executioner performing immolation in Iṣfahān in 494/1101 was nicknamed Mālik in reference to the mythical guardian angel in Hell (see Q39:71); see Lange, ‘Where on Earth is Hell? State Punishment and Eschatology in the Islamic Middle Period’, in *Public Violence in Islamic Societies*, eds Christian Lange and Maribel Fierro (Edinburgh, 2009), pp. 162–3. Fernando R. Mediano recounted how a Jew was executed by stoning and immolation as late as 1595 in Morocco; see Fernando R. Mediano, ‘Justice, Crime and Punishment in 19th/16th-Century Morocco’, in *Public Violence in Islamic Societies*, eds Lange and Fierro, p. 187.

71. Shams al-Dīn b. Qayyim al-Jawziyya, *al-Ṭuruq al-ḥukūmiyya fī-l-siyāsa al-sharʿiyya* (Mecca, 2007), p. 38.

72. Averroes (Abū al-Walīd b. Rushd), *Bidāyat al-mujtahid wa-l-nihāyat al-muqtaṣid* (Beirut, 1990), II, pp. 743–4.

73. Averroes (Abū al-Walīd b. Rushd), *Bidāyat al-mujtahid wa-l-nihāyat al-muqtaṣid*, XII, pp. 339–40.

Averroes was paraphrasing the famous *ḥadīth* on the prohibition on immolation reported by the companion Abū Hurayra (d. 59/678), who recounted how:

[T]he Messenger of God, may God's prayer and peace be upon him, once dispatched us on a mission saying: 'When you find so-and-so (*fulānan wa-fulānan*), burn them.' But when we eventually departed the Messenger of God, may God's prayer and peace be upon him, said: 'I ordered you to burn so-and-so, but none may punish with fire except for God, and so when you find them, just kill them'.⁷⁴

Aḥlām al-Naṣr easily sensed the problem posed by Abū Hurayra's *ḥadīth* that had served as proof for the consensual prohibition since at least the time of Averroes.⁷⁵ Aḥlām al-Naṣr accordingly advanced three arguments in a bid to permit immolation, each of which we will look at in turn: (1) that immolation did not breach any sacrosanctity (*ḥurma*); (2) that the prohibition was never consensual; and (3) that public interest (*maṣlaḥa*) was ensured by burning al-Kasāsba.

Advancing the first argument, Aḥlām al-Naṣr presented an exegetical opinion attributed to the Andalusian authority on Muḥammad al-Bukhārī's (d. 256/870) canonical *ḥadīth* compilation, al-Muhallab b. Abī Ṣufra (d. 435/1044), who was quoted saying that the Prophet Muḥammad:

[D]id not forbid immolation in the sense of prohibition (*ʿalā maʿnā al-taḥrīm*), but rather for the sake of showing humility to God (*ʿalā sabīl al-tawāḍuʿ li-llāh*), and so as not to mimic His wrath (*lā yatashabbah bi-ghaḍabihi*) when punishing people.⁷⁶

While I will later comment upon the important distinction between prohibition and disapproval, here it suffices to say that Aḥlām al-Naṣr was determined to clarify that IS had not conflated temporal with divine modality when burning Kasāsba, and so rather than mimicking God's punishment in Hell, emphasised that IS merely – and to a lesser degree – imitated the advanced weaponry wielded by the West. Aḥlām al-Naṣr accordingly asked whether 'the crusading coalition' had not already 'burned people with incendiary bombs (*qanābilahum al-ḥāraqa*) and caused disfigurements in countless generations to come' – a reference to America's use of napalm during the Vietnam War. Aḥlām al-Naṣr continued:

74. This *ḥadīth* is found in a variety of renditions, however, the one cited is from al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, 56:225.

75. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 26.

76. *Ibid.*, p. 25.

Those who primarily concern themselves with the details of the immolation neither see the act accurately nor in the wider perspective. Thus, the caliphate did not merely capture and burn [Kasāsba]. Rather, they placed him in a cage and set him on fire before covering him with gravel and rubble, pouring rocks over him, and mixing his flesh with the dirt. But, why did the caliphate do this, and why in such detail?⁷⁷

Aḥlām al-Naṣr readily replied:

This they did to present a miniature picture to the world of what happens every time a missile descends upon the heads and homes of Muslims. This is – around the clock – a recurrent picture: [Muslims] surrounded with nowhere to escape. You burn their bodies beyond recognition to the point where no one may distinguish one from the other. Was the pain of burning [al-Kasāsba's] body greater than this? Did the pilot had to watch his own child, son, or family member burn in front of him? That is the greatest pain! Thus, when houses collapse upon their heads, and their purified bodies mix with the dirt, who may remain alive? Yet again, some even get a taste of both [the collapse and the dirt] until they reach a point where they can barely escape from underneath the rubble and may only continue their life handicapped, amputated, and broken! Thus, all the pain brought by the infidel bombardment has been suffered by Muslims. Yet, we can also tell you about the rest of the tragedies that are taking place in the inward-looking, narcissist, self-worshipping, and self-glorifying sheikhdoms in the East and West. Here, [the Muslims] are silent and dead, not able to move a single finger despite the sweet smell of grilled Muslim flesh filling up the air! Thus, to kill Muslims has become an ordinary and most natural matter – has hostility towards us not become like drinking a sip of water?⁷⁸

Parading the 'hypocrisy' of those who overlook the use of incendiary weaponry while decrying immolation, Aḥlām al-Naṣr shifted the argument from a theological discussion of the potential of anthropomorphism to a political statement on modern arms control. Aḥlām al-Naṣr, however, not only limited herself to questioning whether the laws of war applied equally to everyone, but also raised doubts about whether the consensual prohibition was, indeed, consensual.

77. Ibid., p. 27.

78. Ibid., p. 28.

‘For the sake of argument’, Aḥlām al-Naṣr proceeded, ‘let us forget that we live in an age where every weapon spews fire until death (*kull al-asliḥa fī-hi ḥāraqa hattā al-mawt*), and instead imagine that we lived in an age before [the invention of] these weapons’.⁷⁹ While ridiculing the antiquated spirit of the consensual prohibition – deemed out of touch with the technological advancement of modern weaponry – Aḥlām al-Naṣr mentioned five incidents where immolation had been practised or condoned by the Prophet Muḥammad or the Companions. Paying no regard to the provenance or soundness of the transmitted reports,⁸⁰ Aḥlām al-Naṣr confidently proclaimed that the Companions ‘never prohibited immolation, though some disapproved of it and others permitted it’ with the approval of the Prophet Muḥammad. After all, the Prophet Muḥammad ‘would never do something prohibited’, and so Aḥlām al-Naṣr assured the reader that the Prophet Muḥammad sanctioned immolation by gouging out the eyes of the tribesmen of ʿUrayna.⁸¹ Contrary to the classical commentary tradition, which posited that Q5:33–4 was revealed in order to ‘restrict the scope of punishment’ dealt against the tribesmen of ʿUrayna,⁸² Aḥlām al-Naṣr intimated that their punishment not only sanctioned immolation, but also excessive violence, as the tribesmen never burned their victim, but merely ‘killed the herd’.⁸³ Thus, while never explicitly expressed by Aḥlām al-Naṣr, the fellow *salafī jihādī* scholar Abū al-Ḥārith al-Anṣārī would later admit that the immolation was ‘an extra punishment (*ʿuqūba zāʿida*) [. . .] exceeding the mere *qiṣāṣ*’ dealt against the tribesmen of ʿUrayna.⁸⁴

79. Ibid., p. 25.

80. Aḥlām al-Naṣr only at one point added that a report about the tribesmen of ʿUrayna was a ‘true story (*qiṣṣa ṣaḥīḥa*)’; see Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 6.

81. Ibid., p. 25.

82. This was pointed out to me by Christian Lange; see Lange, ‘Crime and Punishment in Islamic History (Early to Middle Period): A Framework of Analysis’, *Religion Compass* 4.11 (2010), 694–706, here p. 696.

83. This *ḥadīth* is found in a variety of renditions, yet the one transmitted by the traditionist Muḥammad al-Bukhārī (d. 256/870) reads: ‘Qatāda reported to me from Ānas that some men from ʿUrayna once came to Medina. Then, the Messenger of God, may God’s prayer and peace be upon them, allowed them to pay a visit to the camels – as a gesture of charity – to drink their milk and urine. However, they killed the herd and chased [the camels] away, and so the Messenger of God, may God’s prayer and peace be upon him, went in their pursuit. When they were brought to him, [the Messenger of God] cut off their hands and legs, gouged out their eyes, and abandoned them in al-Ḥarra to die [literally, to hold on to or bite the rocks (*yaʿḍūn al-ḥijāra*)]’; see Muḥammad al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ* (Cairo, 2012) XXIV, p. 102.

84. Abū al-Ḥārith al-Anṣārī, *Li-llāh daruk yā dawlat al-islām*, https://top4top.io/downloadf-top4top_3d8b657fc31-pdf.html, 2015, pp. 7–8.

Almost every work published in the campaign by al-Ghurabā³ li-l-^cIlām fervently rejected that the Prophet Muḥammad had prohibited immolation and delegated the punishment to God, and so did everything in their power to discredit the formation of a consensual prohibition by highlighting instances of immolation at the hands of the Companions. Thus, in one such work, the *salafi jihādī* scholar Abū ^cUbayda al-Shinqīṭī compared al-Maqdisī's reliance on Abū Hurayra's *ḥadīth* to the Mu^ctazila's erroneous belief in the unsighting of God on Judgement Day. Thus, like the Mu^ctazila's dependency on Q2:143 – 'He said you will not see Me' – Abū ^cUbayda interestingly reversed the critique commonly levelled against IS by arguing that al-Maqdisī's reading of 'none may punish with fire' was *too literalist* and needed to be contextualised by the custom of the Companions.⁸⁵ Mirza Yunus has, in a study on IS's justification of female slavery, similarly demonstrated how IS neglected mentioning scholarly disagreement (*ikhtilaf*) in order to stifle opposition – much in the same vein opposition to immolation was downplayed by Aḥlām al-Naṣr.⁸⁶ However, contrary to female slavery, immolation was not presented as a mere timeless repetition of prophetic custom, but as a necessary evil in a modern world where 'fire-spewing weaponry' (*al-asliḥa fī-hi ḥāraqa*) – e.g. missiles, napalm and cluster bombs – had become the preferred weapon in the war against Islam. Thus, paraphrasing Joel Blecher, even though IS has often been caricatured for calling for a return to a timeless medieval order, we interestingly see how *timeliness* – not timelessness – was key to Aḥlām al-Naṣr's justification for burning al-Kasāsba.⁸⁷

Finally, we reach the third and last argument, and as though Aḥlām al-Naṣr forgot she was living in a 'state', she only now proceeded to bring forth the overarching authority of the self-declared caliph, Abū Bakr al-Baghdādī (d. 2019). Aḥlām al-Naṣr began by explaining how 'the law had been revealed to uphold justice (^c*adl*) and safeguard the purposes of the law (*maqāṣid al-sharī^ca*)', proceeding to mention four such purposes – pride, strength, justice and dignity (*al-^cazza wa-l-quwwa wa-l-^cadāla wa-l-karāma*) – none of which were included

85. Abū ^cUbayda al-Shinqīṭī, *Ḥarq Mu^cādh al-Kasāsba bayna tadā^ciyyat al-shar^c wa-l-wāqī^c*, 2015, p. 9.

86. Mirza Yunus, "'The Slave Girl Gives Birth to Her Master': Female Slavery from the Mamluk Era (1250–1517) to the Islamic State (2014–)", *Journal of the American Academy of Religion* 83.3 (2017), 577–99. This argument was also put forth by Rosalind Gwynne in her study of Usāma b. Lādin's interpretation of the Qur^cān, 'Usama bin Ladin, the Qur'an and Jihad', *Religion* 36.2 (2006), 61–90.

87. Joel Blecher, *Said the Prophet of God: Hadith Commentary Across a Millennium* (Berkeley and Los Angeles, 2017), p. 187.

in the original five proposed by Abū Ḥāmid al-Ghazālī (d. 505/1111).⁸⁸ Quite the contrary, al-Ghazālī had foreseen the dangerous attraction to this powerful discretionary tool, and accordingly cautioned the legal utilisation of the *maqāṣid al-shariʿa* to the point of deeming them ‘illusory sources’ (*usūl mawhūma*) in the derivation of law.⁸⁹ Paying no heed to this warning, Aḥlām al-Naṣr argued that whenever the ‘public interest’ (*maṣlaḥa*) was found, ‘one must specify how to implement [that interest]’⁹⁰ – a rewording of the Azharī reformer ‘Abd al-Wahhāb Khallāf’s (d. 1956) famous dictum that ‘wherever the *maṣlaḥa* is found, so is God’s law’.⁹¹ However, failing to properly delimit the extent of the *maṣlaḥa*, Aḥlām al-Naṣr simply stipulated that concerning the treatment of prisoners (*asrā*), ‘a leader (*imām*) may rule according to what the latter himself considers to carry the greatest weight in the *maṣlaḥa* of Islam and the Muslims’.⁹² Abū Bakr al-Baghdādī was then practically awarded full discretionary powers to determine the *maṣlaḥa* and thereby the fate of the imprisoned al-Kasāsba.

Aḥlām al-Naṣr was, however, keenly aware of the critique that a weak and unchecked definition of *maṣlaḥa* could result in the dilution and even irrelevance of Islamic law. Thus, while al-Khallāf’s definition certainly ‘enlarged the area of rulings validly based on an unattested *maṣlaḥa*’, this reformed notion of *maṣlaḥa* was never meant to impinge upon ‘those matters in scripture that [. . .] were unequivocally stated’⁹³ – such as the prohibition on immolation. Anticipating the critique of stretching the concept of *maṣlaḥa* beyond recognition, Aḥlām al-Naṣr warned the reader that ‘neither one’s desires nor those of a breastfed child may ever replace the *maṣlaḥa*’.⁹⁴ Aḥlām al-Naṣr decried how IS had been portrayed as ‘madmen’, ‘dumb’ and ‘maniacs’ – implored to ‘act rationally and consider the *maṣlaḥa* of the country’ – when burning al-Kasāsba was about nothing else than ‘upholding God’s law’.⁹⁵ Thus, according to what *maṣlaḥa* – Aḥlām al-

88. Abū Ḥāmid al-Ghazālī established these respectively as religion (*dīn*), life (*nafs*), intellect (*ʿaql*), progeny (*nasl*) and property (*māl*), while progeny and property was sometimes substituted with honour (*ʿird*); see Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden, 2010), pp. 67, 100.

89. Opwis, *Maṣlaḥa and the Purpose of the Law*, p. 77.

90. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 29.

91. ‘Abd al-Wahhāb Khallāf, *Maṣādir al-tashrīʿ al-islāmī fī-mā lā naṣṣ fī-hi* (Cairo, 1954), pp. 90, 101, 160.

92. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 29.

93. Opwis, ‘Maslaha in Contemporary Islamic Legal Theory’, *Islamic Law and Society* 12.2 (2005), 182–223, here p. 213.

94. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 30.

95. *Ibid.*, p. 14.

Naṣr pointedly asked – ‘should we give into gratefulness and thank al-Kasāsba for burning and killing Muslims?’⁹⁶

Al-Maḡdisī, on 7 February 2015 – a week prior to the publication of *Nay, We Obeyed God When We Burned Him* – released a letter online addressed to Abū Bakr al-Baḡhdādī in which al-Maḡdisī rejected any ‘defiant interest’ (*maṣlaḥa nika’iyya*) IS hoped to safeguard by burning al-Kasāsba. Proposing instead a prisoner exchange between al-Kasāsba and Sājida al-Rishāwī (d. 2015) – a woman arrested on 9 November 2005 after a failed attack on the Radisson Hotel in Amman – al-Maḡdisī explained that the only purpose (*maqṣūd*) for implementing *qiṣās* was the protection of life as mentioned in Q2:179:

[S]hould the *qiṣās* you demand for [al-Kasāsba] cost the life of this pure sister, then [the punishment of immolation] cannot be justified as it opposes its own purpose and contradicts the *maṣlaḥa* for which it was stipulated.⁹⁷

Clearly aware of the proposal, Aḥlām al-Naṣr conclusively launched an attack against the so-called ‘shaykh-pretender’ (*mutamashaykh*) – a designation reserved exclusively for al-Maḡdisī. Portrayed as nothing but ‘a ball between the tyrant’s legs’, Aḥlām al-Naṣr scolded al-Maḡdisī for being puppeteered by an infidel government ‘to do a predetermined job’, and claimed that even ‘an ordinary subject’ in al-Raḡqa knew more about law than al-Maḡdisī.⁹⁸ Al-Maḡdisī was, however, not the only *salafī jihādī* scholar to openly critique the punishment of immolation, and so within a year of the publication of Aḥlām al-Naṣr’s work, the *salafī jihādī* community found itself embroiled in a heated debate not merely about the legality of immolation, but about the very *raison d’être* of Islamic law. In the remainder of this chapter, I will replay these discussions as they unfolded within and between IS and al-Qāʿida.

DEBATING IMMOLATION IN THE ISLAMIC STATE

Aside from the punishment of *qiṣās*, which was frequently mentioned as a justification – or exemption from the prohibition – of immolation, the principle of *maṣlaḥa* was the most oft-repeated justification for burning al-Kasāsba in the scholarly campaign launched by al-Ghurabāʾ li-l-ʿIlām. Thus, the self-styled

96. Ibid., p. 7.

97. Abū Muḥammad al-Maḡdisī, ‘Risāla ʿilā amīr dawlat al-ʿirāq wa-l-shām al-islāmiyya al-shaykh Abū Bakr al-Baḡhdādī’, <https://alghad.com/نص رسالة المقدسي للبغدادي حول الكساسب>, 2015.

98. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 24.

scholar Abū Bakr al-Atharī had, contrary to Aḥlām al-Naṣr, undoubtedly read al-Ghazālī, and so in a work entitled *Or Do They Have Locks on Their Hearts* (*Am ʿalā qulūb aqfālu-hā*) correctly identified the original *maqāṣid al-shariʿa*, and argued that immolation was an even more justified reason than *qiṣāṣ* for burning al-Kasāsba.⁹⁹ This concern for the public interest was echoed in another work released in the campaign that – written by an anonymous ‘distinguished sister’ – urged the reader to ‘go see the frontlines for yourselves, taste the blazing flame (*saʿīr*) of the aircrafts, and watch children turn to ashes!’.¹⁰⁰ Avoiding discussing the legality of immolation herself, the ‘distinguished sister’ instead referred the reader to a study on immolation by Aḥmad b. Nāsir al-Ghāmīdī, an assistant professor at the Umm al-Qurā University in Mecca. Having been deleted from the university’s website sometime in February 2015, the study was reprinted by al-Ghurabāʾ li-l-Iʿlām under the title *The Forbidden Word* (*al-Kalima al-mamnūʿa*) and the conclusion summarised by al-Ghāmīdī:

Immolation is not permitted except by the order of the ruler (*sultān*) if the latter deem the public interest to demand either harming [the enemy] (*nikāyatan*) or treating [a perpetrator] in a reciprocal manner (*muʿāmilatan bi-l-mithl*). However, immolation is also permitted for one who has committed a prohibited act as well as for burning wood. However, as for the animal, immolation is forbidden because there is no benefit to be derived from mutilating or tormenting it, except if the infidels have employed [that animal] in an act of military aggression against the Muslims.¹⁰¹

Thus, even though al-Ghāmīdī explicitly upheld Islam as ‘the religion of mercy’ (*dīn al-raḥma*) and admonished ‘killing in a kind manner’ (*bi-iḥsān al-qitla*), IS could easily show how the opinion of a payroll scholar in Saudi Arabia ‘agreed with the action of the *mujāhidīn*’ to burn al-Kasāsba.¹⁰²

Around the time al-Maqdisī released the letter to Abū Bakr al-Baghdādī, al-Ghurabāʾ li-l-Iʿlām published another work, written this time by the *salafī jihādī* scholar Ḥusayn b. Maḥmūd. Published online on 4 February 2015, the work entitled *On the Question of Burning* (*Masʿalat al-ḥarq*) lamented how

99. Abū Bakr al-Atharī argued that immolation served as ‘a deterrence for killing lives (*nufūs*) and annihilating progeny (*nasal*)’; see *Am ʿalā qulūb aqfāluha*, 2015, pp. 19–21. This title was a reference to Q47:24.

100. Afdī Dawlat al-Khilāfa, *Ḥawl iḥrāq al-ḥāriq!*, https://islamicstatecaliphate.blogspot.com/2015/03/blog-post_46.html, 2015, p. 6.

101. Aḥmad b. Nāsir al-Ghāmīdī, *al-Kilma al-mamnūʿa*, 2015, p. 22.

102. *Ibid.*, pp. 3–4.

‘numbskulls, imposters, and infiltrators’ even cared to ‘research the legality of burning a soldier (*raḡul ḡarbī*) who had not only carried the banner of the cross, but thrown burning charcoals (*yaqdhif ḡumam al-nār*) on children of Muslims’.¹⁰³ This was not the first time Ibn Maḡmūd debated the subject of immolation as the latter had already discussed Sarāyā al-Mujāhidīn’s threat to burn three hostages from Japan in Iraq back in 2004. Thus, on 11 April 2004, Ibn Maḡmūd released a short text titled *Nay, You Have in Immolation a Precedent (Bal la-kum fī-l-ḡarq salaf)*, asking rhetorically: ‘[W]hy the *mujāhidīn* should not treat [the hostages] in a manner equal (*bi-l-mithl*) [. . .] to the incendiary cluster bombs, heavy rockets, and radioactive materials that Americans had thrown on Muslims?’.¹⁰⁴ However, despite condoning immolation, Ibn Maḡmūd still cautioned that there was ‘no consensus on the matter’, and so admonished Sarāyā al-Mujāhidīn to instead ‘kill them with the sword or in a quick manner so as to avoid opposition and kill kindly (*yuḡassinū al-qitla*)’.¹⁰⁵

While we do not know exactly what – more than ten years after – prompted him to change his opinion, Ibn Maḡmūd now contended that ‘the guardians of the children have a legal right (*ḡaqq*) to burn [al-Kasāsba]’. Thus, confident that a permission on immolation had existed at the time of the Prophet Muḡammad, Ibn Maḡmūd adduced a report about the companion Khālīd b. al-Walīd (d. 50/642).¹⁰⁶

Khālīd b. al-Walīd once wrote to Abū Bakr after discovering that two men had performed intercourse (*yankuḡ*) in the way you have intercourse with a woman in a region controlled by Arabs. [Abū Bakr] sought counsel from the Companions of the Prophet – among them ‘Alī [b. Abī Ṭālib] – who said that ‘burning them is a command by God’ [. . .] Abū Bakr then wrote Khālīd b. al-Walīd and ordered him to burn [the two men].¹⁰⁷

103. Ḥusayn b. Maḡmūd, *Mas’alat al-ḡarq*, <https://justpaste.it/j9fp>, 1436/2015, p. 1. Maḡmūd excommunicated al-Kasāsba by analogy to an opinion by Aḡmad Shākīr (d. 1958), a late professor at al-Azhar, who was quoted as saying: ‘As for cooperating with the British [in Egypt] – in any form whether extended or minimal – this is an act of recalcitrant apostasy (*ridḡa jāmiḡa*) and blatant infidelity for which there is no excuse’; see Ḥusayn b. Maḡmūd, *Mas’alat al-ḡarq*, p. 2.

104. Ibn Maḡmūd, *Bal la-kum fī-l-ḡarq salaf*, <https://justpaste.it/j8bt>, 1425/2004, p. 1. This work was later republished by IS in February 2015 as part of the campaign launched by al-Ghurabā’ li-l-‘Ilām.

105. Ibn Maḡmūd, *Bal la-kum fī-l-ḡarq salaf*, p. 5.

106. Ibn Maḡmūd, *Mas’alat al-ḡarq*, p. 4.

107. *Ibid.*, p. 7.

Ibn Maḥmūd described how Ibn Qayyim explained that with the exemption of anal penetration (*lūṭiyya*) and drowning by alcohol, ‘what is done to a culprit must be equal to what was done to the victim [. . .] such as being burned, thrown off a high building, or strangled’.¹⁰⁸ Describing how some scholars had even circumvented the problem of anal penetration by instead ‘inserting a stick in the anus until death’, Ibn Maḥmūd quoted the prominent *salafī* scholar Muḥammad b. Šāliḥ al-ʿUthaymīn (d. 2001) for ruling that ‘smashing, stabbing, electrocution, and burning are all permitted if the perpetrator did so himself’.¹⁰⁹ Relating a story from the famous *jihādī* scholar Abū ʿUmar al-Sayf (d. 2005) from Chechnya, the latter in addition explained how while fighting in Afghanistan in the 1980s, al-ʿUthaymīn had issued him with a *fatwā* blanketly permitting mutilating the enemy ‘for the sake of causing terror to enter their hearts’.¹¹⁰ Terror, so it seemed, was a sufficient reason to permit immolation according to Ibn Maḥmūd.

Aḥlām al-Naṣr’s work may reasonably be considered an expansion of the work by Ibn Maḥmūd, which in March 2015 was followed by another work justifying immolation, produced by IS’s unofficial publishing house al-Wafāʾ. This work was written by Musāʿid b. Bashīr (b. 1944), a famed traditionist from Sudan who had studied with Muḥammad Abū Khubza (d. 2020) and Muḥammad Nāṣir al-Dīn al-Albānī (d. 1999) in Morocco and Saudi Arabia, respectively, before pledging allegiance to IS on 24 June 2014. Thus, rather than a legal exposition, Ibn Bashīr’s work resembled a traditional *ḥadīth* compilation in which reports were plainly reproduced to prevail upon the reader that immolation was practised by the Prophet Muḥammad. Thus, we only catch a brief glimpse of Bashīr’s own opinion when, in conclusion, Bashīr justified immolation in the case of *qiṣāṣ*, since ‘we do not possess neither the oxide nor the fiery and chemical substances (*al-uksīd wa-l-mawād al-ḥāriqa wa-l-kīmāwiyya*) with which the victims were wronged’.¹¹¹ Echoing the argument made by Ibn Maḥmūd, Ibn Bashīr moreover justified the cruelty of the punishment by arguing how al-Kasāsba’s execution had ‘imprinted itself on the mind and left a profound impression that’, continuing

108. Ibid., p. 8.

109. Ibid., p. 11. Abū Sulaymān al-Šumālī, whom we shall later encounter, similarly creatively argued that rather than punishing a person by drowning him in alcohol, one should drown the convicted in ‘a fluid like vinegar, water, or something bitter’; see *Nasb al-manjanīq li-naqd risālat al-Taḥqīq fī ḥurmat al-taḥrīq*, https://archive.org/details/nasb_al-mnjqnq.1436/2015, p. 73.

110. Ibn Maḥmūd, *Masʿalat al-ḥarq*, p. 13.

111. Musāʿid b. Bashīr, *Masʿalat al-taḥrīq bi-l-nār*, <https://www.noor-book.com/-/كتاب-مسألة-التحريق-بالنار.pdf>, 1436/2015, p. 8.

the argument, 'will work as a suppression of criminality (*zajr*) and an instrument of deterrence (*radʿ*)'.¹¹²

Ibn Bashīr and Ibn Mahmūd's argument was once again reiterated when an obscure *salafī jihādī* scholar from Gaza by the name Abū al-Zahrā° al-Atharī on 16 August 2015 released a work that too justified burning al-Kasāsba. Relying on the scholarship of both al-Hawālī and the late Grand Mufti of Saudi Arabia, °Abd al-°Azīz b. Bāz (d. 1999), Abū al-Zahrā° claimed that Q5:51 proved that al-Kasāsba had committed 'the worst likely violation (*nāqīd min nawāqīd*) against the faith', and for this single reason was entitled to suffer a pain 'equal to the injury caused by the torment of fire' (*tusūmu-hum sū° al-°adhāb bi-l-nār*) inflicted on the people in Syria.¹¹³ However, contrary to both Ibn Bashīr, Ibn Mahmūd and Aḥlām al-Naṣr, Abū al-Zahrā° fully acknowledged that immolation was principally prohibited in Islamic law. However, in order to avoid brandishing the punishment as an innovation (*ibtidā°*), Abū al-Zahrā° compared immolation to the act of consuming pork, which though *principally* forbidden was permitted 'if anyone is forced to eat such things out of hunger' (Q2:173). Adducing the legal theorem 'to every rule is an exemption' (*li-kull qā°ida istithnā°*), Abū al-Zahrā° simply explained that immolation was a mode of slaying exempted by *qīṣāṣ*, and so IS was absolved from blame by having burned al-Kasāsba.¹¹⁴ Yet, even when admitting that 'burning infidels is principally forbidden unless they burn us first',¹¹⁵ Abū al-Zahrā° still lamented how some *salafī jihādī* scholars not only categorically prohibited immolation, but even went as far as publicly reproofing IS.¹¹⁶ Abū al-Zahrā°'s scorn was, however, reserved for one very particular scholar: Abū al-Mundhir al-Shinqīṭī.

112. Ibid., pp. 8–9.

113. Abū al-Zahrā° al-Atharī, *al-Taḥqīq fī jawāz al-taḥrīq mu°āmalatan bi-l-mithl*, <https://justpaste.it/taḥqīqtahrq>, 1436/2015, pp. 3, 5. Abū al-Zahrā° also signed the work with the name Taqī al-Dīn b. Aḥmad al-Ghazī al-Atharī.

114. Ibid., p. 5.

115. Abū al-Zahrā° also permitted immolating a murderer to death even if the murderer had burned – yet not killed – a victim with reference to a (undocumented) ruling by the eponymous Mālik b. Anas (d. 179/795); see al-Atharī, *al-Taḥqīq fī jawāz al-taḥrīq mu°āmalatan bi-l-mithl*, p. 7.

116. Abū al-Zahrā° explicitly mentioned Abū Mundhir al-Shinqīṭī; see al-Atharī, *al-Taḥqīq fī jawāz al-taḥrīq mu°āmalatan bi-l-mithl*, pp. 7–8. Abū al-Zahrā° was referring to Abū al-Mundhir's earlier work (see below) *al-Ḥadī al-samah fī ṭuruq al-qatl wa-l-dhabḥ*, <https://justpaste.it/alhady>, 1436/2014.

A RESPONSE FROM AL-QĀʿIDA

Though likely born in Mauritania,¹¹⁷ not much else is known about the shadowy online persona Abū al-Mundhir. Appointed to the Shariʿa Council on al-Maqdisī's popular website, Minbar al-Tawḥīd wa-l-Jihād, in 2009,¹¹⁸ Abū al-Mundhir was a prolific *salafī jihādī* scholar aligned with al-Qāʿida who, for example, justified al-Qāʿida's attack on the US Ambassador to Libya in 2012, and urged *jihādī* groups to establish theonomy in Egypt, Tunisia and Syria during the Arab Spring.¹¹⁹ However, with IS's establishment in Syria, allegiances suddenly shifted, and so in the period between April 2013 and January 2014, Abū al-Mundhir authored a series of articles that not only stated that IS had a claim to 'a general oath of allegiance' (*bayʿā ʿamma*), but were even published by al-Ghurabāʾ li-l-Iʿlām.¹²⁰ However, when Abū Bakr al-Baghdādī on 4 July 2014 ascended the pulpit in the al-Nūrī Mosque in Mosul to declare the establishment of the caliphate, Abū al-Mundhir suddenly reversed the opinion on IS. As noted by Cole Bunzel, Abū al-Mundhir had in May 2013 already concluded that pledging allegiance to the founder of the Ṭālibān in Afghanistan, Muḥammad ʿUmar (d. 2013), was a duty bestowed on each capable Muslim.¹²¹ Thus, given that Muḥammad ʿUmar had been the effective caliph since 1996, Abū al-Mundhir on 18 July 2014 issued a *fatwā* disputing Abū Bakr al-Baghdādī's claim to the caliphal seat, practically denouncing IS's *raison d'être* in Syria.¹²²

Having been removed from Minbar al-Tawḥīd wa-l-Jihād in 2013, Abū al-Mundhir was now welcomed back by al-Maqdisī, who once again began to

117. This is solely based on Abū al-Mundhir's kinship attribution (*nisba*) to Shinqīt (located in northern Mauritania).

118. Wagemakers, 'Protecting Jihad: The Sharia Council of the Minbar al-Tawhid wa-l-Jihad', *Middle East Policy* 18.2 (2011), 148–62, here p. 153. Wagemakers also noted Abū al-Mundhir's personal and ideological affinity with al-Maqdisī; see Wagemakers, 'Protecting Jihad', p. 154.

119. Daveed Gartenstein-Ross and Tara Vassefi, 'Perceptions of the "Arab Spring" within the Salafi-Jihadi Movement', *Studies in Conflict and Terrorism* 35.12 (2012), 831–48, here pp. 839–40; and Aaron Y. Zelin, *Your Sons Are at Your Service: Tunisia's Missionaries of Jihad* (New York, 2020), pp. 130, 164.

120. Abū al-Mundhir al-Shinqīṭī, *Rafʿ al-malām ʿan junūd dawlat al-islām*, <https://www.jihadica.com/wp-content/uploads/2014/07/14-malām-ʿan-junūd-dawlat-al-islām.pdf>, 1435/2013, p. 23.

121. Cole Bunzel, *From Paper State to Caliphate: The Ideology of the Islamic State* (Washington, DC, 2015), p. 34.

122. Abū al-Mundhir al-Shinqīṭī, *Ilān al-khilāfa fī-l-mīzān al-sharʿī*, <https://www.jihadica.com/wp-content/uploads/2014/07/14-ilān-al-khilāfa-fī-l-mīzān-al-sharʿī.pdf>, 2014, see, in particular, pp. 6–7.

publish the former's work – beginning with a book denouncing the use of violence by IS. Published on 9 October 2014, the lengthy work entitled *The Right Conduct for Modes of Slaying and Slaughter (al-Hudā al-samah fī ʿuruq al-qatl wa-l-dhabh)* argued that the prophetic precept to 'kill in a kind manner' had been 'prescribed' (*kutiba*) as an obligation on each and every Muslim.¹²³ Thus, in addition to prohibiting execution by beheading, beating the facial region, slicing the neck and removing a decapitated head from the body, Abū Mundhir also addressed the legality of immolation that, according to him, had been abrogated by the Prophet Muḥammad. Abū al-Mundhir explained that even though the Prophet Muḥammad had threatened to burn houses belonging to 'those who did not attend the congregational prayer' (*al-mutakhallifin 'an al-ṣalāt*), the threat was uttered 'in a period of legality before being abrogated' by Abū Hurayra's *ḥadīth* that 'none may punish with fire except for God'.¹²⁴ As noted by Nathan French, Abū al-Mundhir had already addressed the subject of immolation back in 2011 when – in response to a street vendor setting himself on fire on 17 December 2010 in Tunisia, effectively launching the Arab Spring – Abū al-Mundhir prohibited self-immolation (*ashʿal al-nār fī nafsīhi*) as an act of suicide meant only 'to escape divinely appointed suffering for this life'.¹²⁵ However, appalled by al-Kasāsba's immolation, Abū al-Mundhir raised a renewed critique against IS, consequentially prompting perhaps the most intriguing contribution to the discussion of immolation since Aḥlām al-Naṣr.

Published on 4 September 2015 by Nukhbat al-Fikr – a media network engaged in rebranding Minbar al-Tawhīd wa-l-Jihād – Abū al-Mundhir's work entitled *A Study on the Sanctity of Immolation (al-Taḥqīq fī ḥurmat al-taḥrīq)* directly addressed IS's immolation of Kasāsba. Denouncing the *fatwā* written by al-Binʿalī, Abū al-Mundhir castigated him as a 'young student who cannot possibly claim the competency of a scholar'.¹²⁶ Abū al-Mundhir criticised al-Binʿalī for misquoting the position of the Shāfiʿīs and the Ḥanafīs, who according to Abū al-Mundhir upheld the prohibition (*ḥurma*) on immolation with reference to the *ḥadīth* reported by Abū Hurayra. Citing the medieval Shāfiʿī jurist Abū Zakariyyā al-Nawawī (d. 676/1277), Abū al-Mundhir acknowledged

123. al-Shinqīṭī, *al-Hudā al-samah fī ʿuruq al-qatl wa-l-dhabh*, p. 8.

124. *Ibid.*, p. 11.

125. Nathan S. French, *And God Knows the Martyrs*, pp. 107–8. Abū Mundhir's *fatwā* was entitled *Ḥukm al-muntaḥir ashʿal al-nār fī nafsīhi*, http://www.ilmway.com/site/maqdis/FAQ/MS_6354.html, 2011.

126. Abū al-Mundhir al-Shinqīṭī, *Taḥqīq fī ḥurmat al-taḥrīq*, <https://jihadology.net/2015/09/04/majmuah-nukhbat-al-fikr-presents-a-new-release-from-shaykh-abu-al-mundhir-al-shinqiti-the-investigation-into-the-sanctity-of-burning>, 1436/2015, p. 9.

that the Prophet Muḥammad immolated the tribesmen of ʿUrayna, yet argued that the penalty occurred before the revelation of Q5:33–4 detailing the *ḥudūd*, and so had been derived solely by the independent reasoning (*ijtihād*) wielded by the Prophet Muḥammad.¹²⁷ Thus, acknowledging the apparent contradiction (*taʿāruḍ*) between the mutilation of the tribesmen of ʿUrayna, and the Prophet Muhammad’s prohibition on immolation as reported by Abū Hurayra, Abū al-Mundhir reminded the reader of the legal maxim that ‘the prophetic word always takes precedence over prophetic action’.¹²⁸ Additionally, contrary to Aḥlām al-Naṣr’s argument that immolation was frequently performed by the Companions, Abū al-Mundhir categorised these reports as ‘unusual and contradictory’ and confidently declared that ‘no such thing was reported during the time of the Prophet’.¹²⁹ Moreover, and similar to the sanctity of immolation, God had, according to Abū al-Mundhir, proclaimed the inviolability of such attributes as ‘pride’ and ‘majesty’ by stating that: ‘[P]ride is My cloak and majesty My robe, and whoever competes with Me in either of them shall be thrown in the Hellfire’.¹³⁰ Thus, wondered Abū al-Mundhir, what audacity had driven IS to perform the punishment of immolation, consequentially entering into a competition with God?

Abū al-Mundhir effectively made safeguarding sanctity the overarching argument for prohibiting immolation, since ‘God the Exalted permitted [immolation] for no one but Himself’ (*allah taʿāla jaʿala dhālika li-naḥsihi wa-lam yajaʿaluhu li-aḥad*) – much like the *ḥudūd* that were traditionally considered penalties for violating the rights (*ḥuqūq*) not of men but of God.¹³¹ Categorising immolation as ‘one of the greatest sins’ (*min al-kabāʾir*), Abū al-Mundhir implicitly critiqued Aḥlām al-Naṣr for misleadingly presenting as consensual the peripheral opinion

127. However, with reference to the medieval Shāfiʿī traditionist Abū Bakr al-Bayhaqī (d. 458/1066) and the Ḥanafī scholar Muḥammad b. ʿĀbidīn (d. 1836), Abū al-Mundhir conceded that the Shafiʿīs and Hanafīs permitted the punishment of immolation in the case of infidels resisting surrender (*imtināʿ*), albeit immolation was strictly prohibited in captivity; see al-Shinqīṭī, *Taḥqīq fī ḥurmat al-taḥrīq*, pp. 4–5, 12.

128. Abū al-Mundhir attributed this maxim to the Mālikī jurist Abū Ishāq al-Shāṭibī (d. 790/1388); see al-Shinqīṭī, *Taḥqīq fī ḥurmat al-taḥrīq*, p. 14.

129. Ibid., p. 18. Abū al-Mundhir, for example, argued that the report on immolation attributed to Khālid b. al-Walīd and mentioned by Ibn Maḥmūd was not even transmitted by the famed traditionist ʿAbd al-Razzāq al-Ṣanʿānī (d. 211/827); see al-Shinqīṭī, *Taḥqīq fī ḥurmat al-taḥrīq*, p. 23. Moreover, in the case of burning houses of those who did not attend the congregational prayer, this punishment was subsumed under the prohibition on immolation in captivity; see al-Shinqīṭī, *Taḥqīq fī ḥurmat al-taḥrīq*, p. 24.

130. Ibid., p. 18.

131. Ibid., p. 11; and Peters, *Crime and Punishment in Islamic Law*, p. 7.

that mere ‘disapproval’ of immolation had not prohibited the Companions from practising immolation in Medina. Correcting that this opinion was solely held by al-Muhallab, Abū al-Mundhir clarified that the consensual position entailed that the permission of immolation was abrogated due to a concern for violating the prohibition (*ḥurma*) on immolation – an opinion represented by the pre-eminent traditionist Shahāb al-Dīn b. Ḥajar al-ʿAsqalānī (d. 852/1449).¹³² Aḥlām al-Naṣr could, moreover, neither claim the existence of a consensual permission on immolation, since this process had been invalidated by the companion ʿAbd Allāh Ibn ʿAbbās’s (d. 68/687) opposition as reported by al-Bukhārī:

ʿAlī [b. Abī Ṭālib] burned a group of people who had apostatized from Islam. However, when the news reached Ibn ʿAbbās he said: ‘If it had been I, then I would not have burned them, for the Messenger of God, may God’s prayer and peace be upon him, said: “Do not punish with the punishment of God” (*lā tuʿadhibū bi-ʿadhāb allāh*). As for myself, I would merely have killed them as the Prophet, may God’s prayer and peace be upon him, said: “As for the person who changes his religion, kill him”’.¹³³

Abū al-Mundhir thus strongly rejected immolation as a mode of slaying (*wasīlat al-qatl*), reiterating that the ratio legis (ʿilla) for the prohibition was that ‘lighting fire’ (*al-kayy bi-l-nār*) was considered ‘a prerogative’ (*min khaṣāʾis*) of God. Relying on the opinion of the premodern jurist Muḥammad al-Shawkānī (d. 1839), Abū al-Mundhir contended that robbing God of the right to burn was tantamount to ‘disobeying and rebelling against Him’.¹³⁴ Deploring how the principle of reciprocity was grossly exceeded in the punishment dealt against al-Kasāsba, Abū al-Mundhir concluded the work by repeating that immolation was not merely disapproved, but considered a blasphemous breach of the sacrosanctity that shrouded God.¹³⁵

It was not long before a radical *salafī* scholar from Somalia known widely as Abū Sulaymān reacted to the criticism raised by Abū al-Mundhir. Presently a teacher at the religious institution Dār al-Ḥadīth in Nairobi, Abū Sulaymān in 2015 released a series of apologetic treatises favourable to IS. This support was, for example, evident when Abū Sulaymān on 19 January 2015 published a work entitled *Providing Counsel (Badhal al-nuṣḥ)* that served as a commentary on Abū al-Mundhir’s aforementioned *The Right Conduct for Modes of Slaying*

132. Ibid., pp. 6–8.

133. Ibid., p. 20. This *ḥadīth* is found in al-Bukhārī, *Jāmiʿ al-ṣaḥīḥ*, LVI, p. 226.

134. al-Shinqīṭī, *Tahqīq fī ḥurmat al-taḥrīq*, p. 29.

135. Ibid., p. 32.

and Slaughter. Even though *Providing Counsel* was released a week prior to al-Kasāsba's published execution on 3 February 2015, Abū Sulaymān still devoted a paragraph to discussing the subject of immolation first addressed by Abū al-Mundhir. Claiming that 'killing infidels in any manner possible is a righteous and kind deed', Abū Sulaymān directly opposed Abū al-Mundhir's mantra to 'kill in a kind manner', explaining how ʿAlī b. Abī Ṭālib had even trampled a group of apostates to death with his own feet in the condoning presence of the Companions.

Thus, contrary to Abū al-Mundhir's argument that kindness was 'prescribed' (*kutiba*) as an obligation on humankind, Abū al-Sulaymān contended that kindness was rather a 'predestined prescription' (*katab qadrī*) beyond human control, meaning that one could only act kindly if such an act was predestined by God.¹³⁶ Proceeding to the question of immolation, Abū Sulaymān protested that the opposing opinion attributed to Ibn ʿAbbās had invalidated the consensual permission on immolation – a consensus established when Abū Bakr and ʿAlī b. Abī Ṭālib reportedly 'immolated homosexuals' (*ḥarq al-lūṭiyya*) in Medina – since Ibn ʿAbbās at that time was 'too young to partake in a consensus'.¹³⁷ Abū Sulaymān's most damning reproof was, however, directed at Abū al-Mundhir's belief in the sanctity of immolation, favouring instead that a solid majority had argued that immolation was merely disapproved, but never prohibited by the Prophet Muḥammad.¹³⁸

This point was briefly raised by Aḥlām al-Naṣr¹³⁹ and was important, since disapproval (*karāha*) as a legal category included 'that for which an aversion is felt' – like divorce or swearing – 'even though it is thought to be in all probability permissible'.¹⁴⁰ Thus, claiming that the encouragement to fight 'the infidels' (*al-kāfirīn*) in Q2:191 was 'a command to kill them in any way, shape, or form', Abū Sulaymān explained that:

136. Abū Sulaymān al-Ṣūmālī, *Badhal al-nuṣṣa fī-l-taʿlīq ʿala al-Hudā al-samah fī ṭuruq al-qatl wa-l-dhabh*, <https://www.noor-book.com/كتاب-بذل-النصح-في-التعليق-على-الهدى-السمح-في-طرق-القتل-والذبح.pdf>, 1436/2015, pp. 12, 14.

137. Abū Sulaymān argued that the Prophet Muḥammad burned those who did not attend the congregational prayer 'without excusing himself' (*min ghayr ʿadhar*); see al-Ṣūmālī, *Badhal al-nuṣṣa*, pp. 94, 99.

138. Abū Sulaymān more specifically argued that the Companions of the Prophet Muḥammad 'agreed that [immolation] was permitted before any mention of a prohibition because they cited "disapproval" (*karāha*) before the argument for abrogation (*naskh*)'; al-Ṣūmālī, *Badhal al-nuṣṣa*, p. 94.

139. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 25.

140. Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-ʿAmidī* (Salt Lake City, 2010), pp. 98.

[T]he majority favoured that [immolation] was disapproved rather than abrogated since the argument for abrogation was annulled and invalidated by the majority's opposition (*khilāf*) to this argument. Rather, they favoured that [Q2:191] commanded them to burn as this was merely one among many ways to slaughter infidels. However, [the Prophet Muḥammad] still abstained from [immolation] for the sake of disassociating himself from the image of partaking in the punishment of fire and to strengthen the role of the Lord.¹⁴¹

This argument was reiterated when Abū Sulaymān on 28 September 2015 once again confronted Abū al-Mundhir by releasing a commentary titled *Raising the Catapult* (*Nasb al-manjanīq*) on Abū al-Mundhir's *A Study on the Sanctity of Immolation*. Arguing that Abū al-Mundhir's preference for the sanctity of immolation was 'a matter of personal belief (*i'tiqādiyya*), not of reality', Abū Sulaymān repeated that 'the general command to kill [infidels] precipitated the command to employ every means of slaughter' (*bi-jamī' ālāt al-qatl al-mukhtalifa*).¹⁴² Reacting to Abū al-Mundhir's argument that 'pride' and 'majesty' were also reserved for God, Abū Sulaymān countered that the two attributes 'are still permitted for some citizens (*muwāṭīn*)'¹⁴³ – like rulers or shaykhs – adding that:

[I]f every form of punishment is a punishment reserved by God, then every punishment in existence should be forbidden (*muḥarram*) – not merely disapproved (*makrūh*) – since [these punishment] are prerogatives (*min khaṣā'is*) of God.¹⁴⁴

God, in other words, was simply so omnipotent that any attempt to mimic Him was deemed not only ludicrous, but outright impossible, according to Abū Sulaymān. Yet although having conceded to the argument that immolation was disapproved in *Providing Counsel*, Abū Sulaymān now completely discarded the position on disapproval, claiming that 'neither the emigrants (*muḥājirīn*) nor the helpers (*anṣār*) disapproved of [immolation] when they saw or performed it' during the era of the Prophet Muḥammad.¹⁴⁵ Disapproval was similarly rejected as an argument by Abū Bakr al-Atharī, who instead stated that

141. al-Šumālī, *Badhal al-nuṣḥ*, p. 94.

142. al-Šumālī, *Nasb al-manjanīq li-naqḍ risālat al-Taḥqīq fī ḥurmat al-taḥrīq*, pp. 18, 22.

143. Abū Sulaymān similarly argued that since God was not angry when mankind began to address one another by the title 'lord' (*sayyid*) – potentially stripping God of the titular synonym 'Lord' (*rabb*) – the punishment of immolation could neither be considered a breach of the sanctity (*taḥrīm*) on immolation; see al-Šumālī, *Nasb al-manjanīq*, pp. 63, 95.

144. al-Šumālī, *Nasb al-manjanīq*, p. 60.

145. *Ibid.*, p. 54.

the exclamation not to ‘punish with fire’ was ‘a consideration, not an absolute command (*wa-lakin tamahhalū fa-laysa al-amr ‘alā iṭlāqi-hi*)’ on the part of the Prophet Muḥammad.¹⁴⁶ Furthermore, given that the Prophet Muḥammad permitted cautery, branding animals and burning corpses – all acts that required kindling fire – Abū Sulaymān held that there was no reasonableness in permitting merely ‘a small portion of immolation’ and prohibiting a large one.¹⁴⁷ Reflecting the binary thinking that permeated Abū Sulaymān’s work, immolation – whether minor or major – was, according to him, either performed absolutely or not performed at all. Thus, if one was permitted to brand an animal or burn down a building without breaching the sanctity of immolation, how could burning a human being reasonably be said to breach the hallowed prerogatives of God?¹⁴⁸

CONCLUSION: ‘ISLAM IS THE RELIGION OF THE SWORD,
NOT PACIFISM’

Even though Abū Sulaymān’s *Raising the Catapult* was the last major contribution to appear in IS’s scholarly campaign to justify immolation, Mu‘ādh al-Kasāsba was not the last victim to be immolated by IS. Having established a legal precedence, IS on 31 August 2015 released a video depicting the immolation of four conscripts of the Popular Mobilization Forces, who were strung up, suspended from a swing and roasted alive over a bonfire in al-Anbār in western Iraq. Claimed as retaliation for an incident on 31 May 2015, where members of the Popular Mobilization Front burned a young man to death in al-Anbār, the executioner spoke directly to the camera saying: ‘[R]etribution (*qiṣāṣ*) has come, for today, we attack them in proportion (*bi-mithl*) to how they attacked our brothers.’¹⁴⁹ Later, on 22 December 2016, IS released yet another video recording the immolation of two servicemen from Turkey, who, tied to the ground with dog collars, were burned alive in Aleppo. As they writhed in agony on the ground, flames devouring them, the executioner poured petrol over them while shouting to the camera: ‘Now, we have avenged the blood (*akhadnā bi-tha’r*) of the Muslims.’¹⁵⁰ However, in contrast to al-Kasāsba, neither servicemen had

146. al-Atharī, *Am ‘alā qulūb aqfāluha*, p. 16.

147. al-Šumālī, *Nasb al-manjanīq*, p. 61.

148. *Ibid.*, p. 38.

149. al-Maktab al-I‘lāmī, ‘Fa‘āqabū bi-mithl mā ‘awqabtum bi-hi’, https://archive.org/details/jamalalqudsy_yahoo_20160618_1529, 2015, 04:17–04:30. This video’s title referred to Q16:126.

150. al-Maktab al-I‘lāmī, ‘Dir‘ al-ṣalīb’, https://archive.org/details/goolf_printf_20190228_0622, 2016, 17:31–17:34.

ever piloted an aircraft, and so IS now seemed to extend the purview of *qiṣāṣ* to include anyone associated with an enemy military wielding an air force. Deterring the enemy through creative displays of ever more excessive violence was, so it seemed, more important than abiding by the detailed rules governing Islamic law.

Flicking through the pages of the seventh instalment of the glossy magazine *Dābiq* published immediately after al-Kasāsba's execution, one article held that Islam's consonantal root *s-l-m* did not entail peace (*salām*), but rather submission to the eschatological inevitability that 'the sword will continue to be drawn, raised, and swung until ʿĪsā (Jesus) kills the Dajjāl (the Antichrist) [. . .] and justice will prevail on the entire Earth'.¹⁵¹ Lamenting how so-called 'palace scholars [. . .] who visit the White House and claim to represent Islam' nullify *jihād* and abandon the duty of terrorising the enemy, the article's anonymous author claimed that 'the religion of the sword', not pacifism, was the most apt description of Islam.¹⁵² This dual concern (1) for reviving the violent pedigree in Islam and (2) denouncing the clerical establishment's attempt to pacify religion in subservience to the West also permeated the work by Aḥlām al-Naṣr.

Charged with 'drinking coffee on your plush couches in the West and the Gulf',¹⁵³ Aḥlām al-Naṣr directly attacked the clerical establishment – interchangeably called 'quietists' (*sākitiyyīn*), 'naïve', 'over-sensitives' (*ʿātifiyyīn*) or simply monkeys¹⁵⁴ – for softening, abrogating and explaining away even the slightest mention of violence in Islamic law – a law that instead had become nothing but an appeasement to the West:

[. . .] [N]o sound jurist ever proposed that if infidels think badly of our religion, we ought to explain the law to them, clarify what prompted our actions, and do what they wish with the result of appearing as foolish humanitarians, rationalists, or madmen! Nor have we ever been obliged to halt a legal ruling if godless people become mad or begin to cry in order to prevent their tears from falling or their nerves from breaking down since this might harm their health!¹⁵⁵

151. 'Islam is the Religion of the Sword, not Pacifism', <https://jihadology.net/2015/02/12/al-hayat-media-center-presents-a-new-issue-of-the-islamic-states-magazine-dabiq-7/>, 2015, pp. 23–4.

152. 'Islam is the Religion of the Sword, not Pacifism', pp. 20, 22.

153. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 15.

154. *Ibid.*, pp. 8–9, 11, 13.

155. Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, pp. 29–30. Aḥlām al-Naṣr at one point specifically referred to the Danish Cartoon Controversy, wondering how scholars at that time could rule that the *maṣlaḥa* 'obligated us (*tūjib ʿalaynā*) to ridicule the mockers' when Islamic law clearly stipulated that 'whoever harms the Prophet Muḥammad should be killed'; see Aḥlām al-Naṣr, *Bal ʿaṭʿanā allāh*, p. 13.

Mirroring a critique that has often been levelled at IS, Aḥlām al-Naṣr effectively blamed the clerical establishment for reading scripture *selectively* in order to downplay or abrogate any element deemed too violent, bigoted or unbefitting for their relationship with the West. Thus, rather than mankind being the judge of whether an action is ‘kind’ or ‘evil’, Aḥlām al-Naṣr, in a display of a radical voluntarism, intimated that an action was simply kind if commanded by God. This meant that any endeavour to pacify religion by, for example, prohibiting immolation ironically served only to ‘strip the revealed law of that kindness and guidance (*bi-samāḥati-hi wa-hadiy-hi*)’ already granted by God.¹⁵⁶

Aḥlām al-Naṣr’s concern for reviving the violent pedigree in Islam was also shared by some of the other scholars who partook in IS’s campaign to justify burning al-Kasāsba. Thus, in a work published by al-Ghurabā° li-l-I°lām entitled *For God It Was an Accomplishment, Oh State of Islam (Li-llāh daruk yā dawlat al-islām)*, Abū al-Ḥārith decried how:

[W]e have surrendered our minds to be conquered by ‘the semi-shaykhs’ (*anṣāf al-mashāyikh*) who portray Islam as a religion of mercy, compassion, sympathy, and affection – which is correct – but only for Muslims.¹⁵⁷

Failing to accept that Islam must show hostility to infidels and mercy to Muslims, Abū al-Ḥārith reproofed the clerical establishment for ‘repeating the technical terms and concepts of infidels such as human rights [. . .] in the search for an Islam that pleases the infidel West’.¹⁵⁸ This reproof was echoed by Abū °Ubayda, who in a work released on 5 February 2015 rebutted how the clerical establishment – termed ‘sensitive humanists’ – had made the word ‘humanism’ (*insāniyya*) to stand in opposition to Islam.¹⁵⁹ Proposing an array of heinous penalties like ‘tearing a head apart and cooking it [. . .] or eating the flesh of an

156. Aḥlām al-Naṣr, *Bal °at°anā allāh*, p. 8. This argument was echoed by Ibn Maḥmūd, who not only accused the scholarly establishment for having ‘invented a pragmatist approach (*wasatīyya*)’, but effectively asked ‘the infidels and apostates for mercy in return for softening the religion (*bi-tamyī° al-dīn*) and fabricating lies about God’; see Ibn Maḥmūd, *Mas°alat al-ḥarq*, p. 14.

157. al-Atharī, *Li-llāh daruk yā dawlat al-islām*, p. 4.

158. Ibid., p. 5.

159. al-Shinqīṭī, *Ḥarq Mu°ādh al-Kasāsba bayna tadā°iyyat al-shar° wa-l-wāqi°*, p. 11. Akin to the voluntarist critique raised by Aḥlām al-Naṣr, Abū °Ubayda argued that legal rulings did not necessarily have to ‘agree with [human] temper’ in order to be just, and one should instead calmly ‘surrender to the godly command; the epitome of religious obligation (*taklīf*) and worship (*°abūdiyya*)’; see al-Shinqīṭī, *Ḥarq Mu°ādh al-Kasāsba bayna tadā°iyyat al-shar° wa-l-wāqi°*, p. 8.

infidel women', Abū °Ubayda commended IS for creatively reviving the punishment of immolation, arguing that 'originality, not innovation' (*ibdā°c wa-laysa bi-ibtidā°c*) was the key to deter the West.¹⁶⁰

This violent excessiveness was exactly what Abū al-Mundhir warned against when cautioning that the punishment of *qiṣāṣ* must never exceed (*lā yuzād °alayhi*) the crime committed.¹⁶¹ Abū al-Mundhir's concern for popular discontent with violence was, however, reminiscent of an even older debate about the public display of violence between al-Zarqāwī and the current leader of al-Qā°ida, Ayman al-Zāwāhirī (b. 1951) – a discussion that was sparked by the former's videotaped beheading of the abducted journalist Nicholas Berg (d. 2004). Conceding that 'victory' would not be complete until 'a caliphal state [build] upon the prophetic methodology' (*dawlat al-khilāfa °alā minhāj al-nubuwwa*) was established in Iraq, al-Zāwāhirī, in a personal letter dated 9 July 2005, explained that 'the strongest weapon' (*aqwā silāh*) in the hands of al-Zarqāwī was 'the popular support shown by the masses of the Muslims in Iraq'.¹⁶² Admonishing that al-Qā°ida 'must avoid any action that the masses do not understand or approve', al-Zāwāhirī implored al-Zarqāwī to stop showing 'scenes of slaughtering hostages' (*mashāhid dhabh al-rahā'in*), elaborating that:

[W]e are in a battle, and more than half of this battle is occurring on the media battlefield. Thus, we find ourselves in a media battle in a race for the hearts and minds of our religious nation (*umma*). But, however far our capabilities reach, they will never equal the thousand capabilities of the Kingdom of Satan waging war on us. We do, however, possess the capability to kill prisoners by bullets; [a mode of slaying] that would fulfil the goal (*al-murād*) without opening the gates on ourselves to [endless] questions and doubts – let us spare the people from this.¹⁶³

Given the increasingly violent atrocities committed by IS, al-Zāwāhirī's apprehensiveness continues to reverberate in today's scholarly *salafī jihādī* community that continues to discuss not only the utility and extent of violence, but the very *raison d'être* of Islamic law.

160. al-Shinqīṭī, *Harq Mu°ādih al-Kasāsba bayna tadā°iyyat al-shar°c wa-l-wāqi°c*, p. 21.

161. al-Shinqīṭī, *Tahqīq fī ḥurmat al-tahrīq*, p. 32.

162. Ayman al-Zāwāhirī, 'al-Akh al-karīm al-fāḍil Abū Muṣ°ab', <https://ctc.usma.edu/wp-content/uploads/2013/10/Zawahiris-Letter-to-Zarqawi-Original.pdf>, 2005, p. 5.

163. Ayman al-Zāwāhirī, 'al-Akh al-karīm al-fāḍil Abū Muṣ°ab', pp. 12–13.