

THE LOGIC OF THE CONQUEST SOCIETY:
ISIS, APOCALYPTIC VIOLENCE AND THE
'REINSTATEMENT' OF SLAVE CONCUBINAGE

*Omar Anchassi**

INTRODUCTION¹

Thumāma b. Ashras . . . held that taking women from the Abode of Unbelief as slave-concubines is unlawful, and that whoever has sex with such a captive woman is a fornicator, any [resultant] child illegitimate (*walad zinā*).²

Abū l-Muẓaffar al-Isfarayīnī (d. 471/1078)

. . . precisely in such epochs of revolutionary crisis they anxiously conjure up the spirits of the past to their service, borrowing from them names, battle slogans, and costumes in order to present this new scene in world history in time-honoured disguise and borrowed language.³

Karl Marx (d. 1300/1883)

The past is an interminable source of legitimation. It is invoked, appealed to and mobilised to confute competing claims and to demonstrate the correctness of

* University of Edinburgh

1. Most of the research for this chapter was undertaken during a stint as a postdoctoral researcher at the University of Exeter on the USPPIP (Understanding Sharī'a: Past Perfect, Imperfect Present) Project, funded by a grant from HERA. I thank Professor Rob Gleave for his exemplary mentorship during (and beyond) this period of my career.
2. Abū al-Muẓaffar al-Isfarayīnī, *al-Tabṣīr fī l-dīn wa tamyīz al-firqa al-nājiya 'an al-firaq al-hālikin* ed. Majīd al-Khalifa (Beirut, 1429/2008), p. 269.
3. Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, (marxists.org/archive/marx/works/1852/18th-brumaire/ch01.htm, accessed 2 June 2020). For accessed dates of online resources, see the Bibliography and the accompanying note, p. 366.

one's own. In writing to justify the revival of slave concubinage, Turkī al-Bin^ʿalī (d. 1438/2017), the chief jurisconsult of ISIS and the author of a treatise on the subject, dismissed alternative views as opposed to 'the Qur^ʾān, the *Sunna*, and consensus'. He charged that the only people to entertain the unlawfulness of the institution were 'some Modernists (*ba^ʿḍ al-ʿaṣrāniyyīn wa l-ḥadāthiyyīn*)'.⁴ The counter-example of Thumāma (d. 213/828), then, ought to give one pause. We do know of premoderns who despised slavery *qua* slavery;⁵ is it conceivable that this *éminence grise* of the Ma^ʾmūnid court objected to the sexual use of female captives? On inspection, it turns out that he was nothing if not a rigorist: the Ash^ʿarite theologian ʿAbd al-Qāhir al-Baghdādī (d. 429/1037–8) reports that Thumāma refused to recognise the legitimacy of the 'Abode of Islam', owing to the prevalence of unbelief therein (rendering it a *dār shirk*).⁶ Al-Isfarayīnī points to this as the cause of his idiosyncratic take on the question. Slavery and the closely related institution of concubinage were ubiquitous in early Islamic society, so this absence of condemnation from Thumāma is hardly surprising. He himself, the heresiographers acerbically note, was the outcome of such a union. Van Ess observes that his patrilineal Arab descent was, in remote Khurāsān, a source of personal pride, obviously emphasised in self-defence.⁷

The excavation of past opinion, the example of Thumāma notwithstanding,

4. *Al-Sabī: aḥkām wa masāʾil* (Dīwān al-buḥūth wa l-iftāʾ, 1435/2014), p. 6. On the biography of al-Bin^ʿalī, see Cole Bunzel, 'Wahhabism, Saudi Arabia, and the Islamic State: 'Abdullah Ibn Jibrin and Turki al-Bin^ʿalī', in *Salman's Legacy: The Dilemmas of a New Era in Saudi Arabia*, ed. Madawi al-Rasheed (London, 2018), pp. 183–313 (pp. 190–3). See also Bunzel, 'The Caliphate's Scholar-in-Arms' (www.jihadica.com/the-caliphate's-scholar-in-arms/). On the infighting that led to the marginalisation of al-Bin^ʿalī, see Bunzel, 'Ideological Infighting in the Islamic State', *Perspectives on Terrorism* 13.1 (2019), 13–22 (esp. pp. 16–17). For two other well-known justifications of slavery in the ISIS literature, see 'The Revival of Slavery Before the Hour', *Dabiq* 4 (Dhū l-Ḥijja 1435), 14–17 and 'Slave-Girls or Prostitutes?', *Dabiq* 9 (Sha^ʿbān 1436), 44–9.
5. For example, Gregory of Nyssa (d. 394), who argued that it was immoral to so treat those made in the *imago Dei*: Jonathan A. C. Brown, *Slavery and Islam* (Oxford: Oneworld, 2019), p. 188.
6. ʿAbd al-Qāhir al-Baghdādī, *Al-Milal wa l-niḥal*, ed. Albert Nader (Beirut, 1986), p. 123. See also the discussion in Josef van Ess, *Theology and Society in the Second and Third Centuries of the Hijra: Volume 3* (Leiden, 2018), pp. 180–1. Van Ess has compiled much of the material on Thumāma's views (except for the sources cited here) in *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra: Band V* (Berlin, 1993), pp. 345–52.
7. Van Ess, *Theology and Society: Volume 3*, p. 173. ʿAbd al-Qāhir uses the customary term of abuse, referring to Thumāma as a *hajīn* or 'mixed race' person (*al-Milal*, p. 123). Al-Isfarayīnī, probably drawing on ʿAbd al-Qāhir, denounces this doctrine as a 'confession of his bastardy': *iqrār minhu bi-annahū min walad al-zīnā* (*al-Tabṣīr*, p. 269). He claims that Thumāma was a non-Arab client (*mawlā*) of the Numayrids.

is more than an exercise in antiquarianism, especially where ISIS is concerned. The deployment of precedent was very much part of the ideological fabric of the short-lived, self-proclaimed caliphate. Useful work has been done on tracing elements of this purported continuity.⁸ Numerous commentators have also called attention to the importance of apocalypticism as part of the movement's 'brand', a phenomenon with a very long history in Islamdom.⁹ As Marx would recognise, however, continuity – while important – can conceal great rupture. Danton, Robespierre and other revolutionaries, he writes, 'performed the task of *their* time' (emphasis mine), as it were, though garbed 'in Roman costumes' and making use of 'Roman phrases'.¹⁰ It would clearly be a mistake to ignore the significant divergences between the revolutionary propaganda of, say, the Hāshimites in the second/eighth century and the highly choreographed public appearance of Abū Bakr al-Baghdādī (d. 1441/2019) in his inaugural sermon of July 2014. One should recognise these departures, while remaining sensitive to the evocativeness of the wardrobe (°Abbāsīd black)¹¹ and rhetoric (the first caliphal *khuṭba* reported of Abū Bakr, d. 13/634) of Ibrāhīm °Awwād al-Badrī, Abū Bakr al-Baghdādī. Even his name, the adoption of a *kunya* (teknonym) and *nisba* (affiliation), is emblematic of this evocatory style: neither of these retain any legal significance in modern Middle Eastern states.¹² They are carefully cultivated archaisms.

8. Including David J. Wasserstein's *Black Banners of ISIS: The Roots of the New Caliphate* (New Haven, 2017). On the place of ISIS in the genealogy of Wahhābism generally, see Cole Bunzel, 'From Paper State to Caliphate: The Ideology of the Islamic State', Brookings Foundation: U.S. Relations with the Muslim World, No. 19, March 2015, available online at www.brookings.edu/research/from-paper-state-to-caliphate-the-ideology-of-the-islamic-state/.

9. This element is emphasised in Graeme Wood's *The Way of the Strangers: Encounters with the Islamic State* (London, 2017), pp. 246–69 (esp. pp. 249–64). See also William McCants, *The ISIS Apocalypse: The History, Strategy and Doomsday Vision of the Islamic State* (New York, 2015), pp. 99–120, also pp. 142–7, 163–81.

10. www.marxists.org/archive/marx/works/1852/18th-brumaire/ch01.htm.

11. Hilāl al-Šābi', *Rusūm Dār al-Khilāfah: The Rules and Regulations of the °Abbāsīd Court*, trans. Ellie A. Salem (Beirut, 1975), p. 73. The use of black banners features prominently in premodern apocalyptic literature – for example, the *Kitāb al-Fitan* of Nu°aym b. Ḥammād al-Marwazī (d. 228/843–4), recently translated by David Cook. I cite this in preference to the existing Arabic editions as it is properly critical, being based on the three published editions and one manuscript. See 'The Book of Tribulations': *The Syrian Muslim Apocalyptic Tradition, An Annotated Translation* (Edinburgh, 2019), pp. 155, 174–80. See also McCants, *The ISIS Apocalypse*, pp. 25–7.

12. Wasserstein notes this occurs much more commonly as a given name (*ism*) than a teknonym in biographical dictionaries, see Wasserstein, *Black Banners*, p. 221.

This article attempts to strike a balance between a number of concerns – namely, what one is to make of ISIS’s ‘reinstatement’ of slave concubinage; and what, if anything, this owes to the past. We begin with some remarks on warfare and the social logic of slave concubinage in pre- and early Islamic society to establish a context for comparative purposes. We then devote some attention to exploring the relevance of apocalypticism in ISIS propaganda, along with its strategic deployment of symbolic violence. After a brief excursus on ISIS’s regulation of slave concubinage, we turn to address the treatise *al-Sabī: ahkām wa masā’il* (‘Slave concubinage: rulings and [legal] issues’) at length, exploring its sources and the author al-Bin[‘]alī’s engagement with the premodern juristic tradition.

I. WARFARE AND SLAVE CONCUBINAGE IN PRE- AND EARLY ISLAMIC SOCIETY

They did not give us – the [men of Ṭayy] – their daughters in marriage;
But [rather,] we wooed them against their wills with our swords.¹³

Intertribal violence was a fact of life in pre-Islamic Arabia. This often took the form of raiding for booty, prominently womenfolk. Sexual abduction (*ghaṣb*) was an alternative to contracting marriage by payment of a dowry (*nikāh*). A captive woman found her existing marital ties dissolved and she became a *sabīya*, liable to redistribution among the men of the victorious tribe.¹⁴ One notes, incidentally, that the jurists were divided on whether the pre-existing marriages of couples seized together remained intact.¹⁵ In any case, reference to the enslavement of women in raids is found throughout the *Ayyām al-‘arab* (‘Battle-days of the Arabs’) corpus, with the suggestion that the resulting offspring became part of the dominant group. As ‘Amr b. Kulthūm proclaims: ‘How often shalt thou see among us the son of a captive bride:/who staunchly thrusts

13. The *mu‘allaqa* of ‘Amr b. Kulthūm, cited by Hina Azam, *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure* (New York, 2015), p. 55. It also occurs in *al-Sabī*, p. 3. On the appropriation of pre-Islamic poetry by militant groups, see 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, 2018), pp. 223–46 (at pp. 229–30).

14. Azam, *Sexual Violation*, pp. 54–5.

15. See the discussion in *al-Sabī*, pp. 22–4, according to which the Ḥanafites and Ḥanbalites maintain these marriages intact, while the Mālikites and Shāfi‘ites (among others) hold them to be dissolved by virtue of captivity.

through heroes when he meets them in the fight'.¹⁶ Ironically, then, the children of enslaved womenfolk contributed to the fighting strength of the tribe, augmenting its power and prestige. Beginning in the Prophet's lifetime, this and related practices of war came to be reshaped by the new religious ethos. The notion of *nuṣra* ('mutual support'), for example, lost much of its purely tribal character and was increasingly associated with religiously inspired solidarity: 'if they seek your aid for the sake of religion (*istanṣarūkum fī l-dīn*), then it is your duty to help them . . . (*fa 'alaykum al-naṣr*, Q8:72)'.¹⁷ Goldziher notes more broadly the 'strong and unreconcilable [sic] difference in respect of the social order between the attitude of Arab paganism and the teachings of Islam'.¹⁸

Much scholarship has tracked the transformation of Jāhilī institutions in the early Islamic period. Increasingly, efforts have been directed towards situating these developments in their Late Antique context.¹⁹ *Ghazw* (raiding), previously aimed at despoiling the tribal enemy and integrating captive womenfolk into one's kinship group, grew into the more ambitious and evidently confessional warfare of the *jihād*, 'one of the best attested facts in early Muslim history'.²⁰ There is very little, indeed, to commend the thesis of Juan Cole that the Conquests represent a perversion of the Prophet's teaching.²¹ As the

16. Azam, *Sexual Violation*, p. 55.

17. M. M. Bravmann, *The Spiritual Background of Early Islam: Studies in Ancient Arabian Concepts*, intro. Andrew Rippin (Leiden, 2009), pp. 66–72. Al-Ṭabarī (d. 310/923) glosses the phrase *fī l-dīn* 'that is, if they invoke your help by virtue of belonging to your religion (*bi-annahum min ahli dīnikum*), against your mutual enemies among the pagans': *Tafsīr al-Ṭabarī*, ed. Bashshār Ma'rūf and 'Iṣām al-Ḥarastānī (Beirut, 1415/1994), IV, p. 68.

18. *Muslim Studies*, trans. C. R. Barber and S. M. Stern (New Brunswick, NJ, 2006 repr. of vol. I), p. 45.

19. One excellent recent example of the former is Nurit Tsafir, *Collective Liability in Islam: The 'Āqila and Blood-Money Payments* (Cambridge, 2020), pp. 1–4, 10–17. For the latter, as it relates to the question of violence specifically, see Thomas Sizgorich, *Violence and Belief in Late Antiquity: Militant Devotion in Christianity and Islam* (Philadelphia, 2011), pp. 153–6, 161–7.

20. Khalid Blankinship, *The End of the Jihād State: The Reign of Hishām Ibn 'Abd al-Malik and the Collapse of the Umayyads* (Albany, 1994), p. 11. His summary of the doctrine and its implications remains the best in the literature: pp. 11–19. On the religious elements of Jāhilī warfare, see Reuven Firestone, 'Divine Authority and Territorial Entitlement in the Hebrew Bible and the Qur'an', in *Twenty-First Century Jihad: Law, Society and Military Action*, eds Elisabeth Kendall and Ewan Stein (London, 2015), pp. 45–69 (at pp. 54, 57).

21. Juan Cole, *Muhammad: Prophet of Peace Amid the Clash of Empires* (New York, 2018), pp. 199–205. Cole's scepticism is arbitrary, leading him to reject as fabricated whatever elements of the *sīra-maghāzī* tradition undermine his argument. As Fred Donner has pointed out: 'The Islamic conquest cannot be viewed . . . as something separate from the

Caliphate came to dominate much of the known world shortly after the death of the Prophet, the Arab Muslims formed a conquest elite, settled for the most part in newly established garrison cities (*amṣār*) and living off the stipends garnered from the tribute of subject populations. The conquest elite constituted a tiny minority of the population of the Near East,²² but they were soon joined by others; peasants fleeing poverty, non-Muslims of elite status, and slaves in great profusion. These persons' integration into Muslim society, such as it was, took place through conversion, clientage and, no less importantly, the institution of the *umm al-walad* (literally, 'mother of the child' – that is, the slave mother of the master's child). After some fierce debate that has left its traces in the earliest legal literature, Sunnī jurists more or less agreed by the close of the formative period that these 'mothers of children' (*ummahāt al-awlād*) could not be sold.²³ This made it a much more secure (if slow) form of emancipation than *mukātaba* (contractual release in exchange for payment), and to a lesser extent *tadbīr* (manumission on the master's death).²⁴ The prohibition on the sale of *ummahāt al-awlād*, like many an Islamic innovation, is often attributed to ʿUmar b. al-Khaṭṭāb (d. 23/644), which may be why (as with the prohibition of *murʿa*) Twelver jurists dissented.²⁵ Though the children of these unions did encoun-

career of Muḥammad the Apostle . . . it must be seen as an organic outgrowth from the Prophet's teachings and their impact on Arabian society': *The Early Islamic Conquests* (Princeton, 1981), p. 90. For an illuminating discussion of the earliest non-Muslim sources and how they might be utilised to reconstruct early Islamic doctrine on this point, see Sean W. Anthony, *Muhammad and the Empires of Faith: The Making of the Prophet of Islam* (Oakland, CA, 2020), pp. 42–54.

22. This has been emphasised by Jack Tannous, *The Making of the Medieval Middle East: Religion, Society, and Simple Believers* (Princeton, 2018), p. 350.
23. Ibn Kathīr (d. 774/1373) documents eight opinions on the question in his *Juzʿ fī bayʿ ummahāt al-awlād*, ed. ʿUmar b. Sulaymān al-Ḥafyān (Beirut, 1427/2006), ranging from categorical prohibition (pp. 46–8) to categorical permissibility (i.e. *jawāz bayʿ ummahāt al-awlād muṭlaqan*, pp. 93–4). For a discussion of this essay, see Yunus Mirza, 'Remembering the Umm Walad: Ibn Kathīr's Treatise on the Sale of the Concubine', in *Concubines and Courtesans: Women and Slavery in Islamic History*, eds Matthew S. Gordon and Kathryn A. Hain (Oxford, 2017), pp. 297–323. For other forms of enslavement that some early jurists permitted (self-dedication, debt slavery and the enslavement of foundlings), only for these views to be marginalised by the later alleged consensus, see Irene Schneider, 'Freedom and Slavery in Early Islamic Time [sic] (1st/7th – 2nd/8th Centuries)', *al-Qanṭara* 28 (2007), pp. 353–82.
24. As noted by Jan Hagedorn, *Domestic Slavery in Syria and Egypt 1200–1500* (Bonn, 2020), p. 163. Various Sunnī jurists held that the *mukātaba* agreement could be unilaterally revoked by the master. Other jurists held that the *mudabbār* slave was released from the third of the deceased's estate that could be disposed of as a bequest (*waṣīyya*).
25. The argument is sometimes made that ʿUmar's endorsement suffices to overrule alterna-

ter prejudice (including the apocalyptically inflected kind), they quickly made important contributions to the cultural and intellectual life of the community, and so were ultimately recognised as Muslims in good standing.²⁶ Prosopographical study has shown that, while slave concubinage had been known among the pre-Islamic Arabs, it had not been ‘. . . widely practiced among the pre-Islamic Quraysh . . . [and it] was not a practice known to other peoples of the Late Antique Near East either’.²⁷ The integration of massive numbers of outsiders through this institution therefore appears to be, at least in its immediate temporal and geographic context, without precedent.

Evidently, the incentives to join the conquest elite were numerous, even more so following the °Abbāsid revolution; and ‘rarely’, Crone observes, ‘have imperial powers set the bar to membership of their own favoured ranks so low’.²⁸ Though much ink has been spilled on the subject of motivations for conversion, usually to suggest they were of the mercenary sort, this is somewhat misguided.

tive opinions, a view refuted by Ibn Kathīr, *Juzʿ fī bayʿ*, pp. 73–4. On the Twelver view, see Elizabeth Urban, *Conquered Populations in Early Islam: Non-Arabs, Slaves and the Sons of Slave Mothers* (Edinburgh, 2020), p. 117. Urban’s view needs to be qualified, as the evidence suggests that Twelver jurists generally permitted these sales in only a few cases, e.g. debt. See, for example, Shaykh al-Ṭāʾifa al-Ṭūsī (d. 460/1067), *al-Istibṣār fī mā ukhtulifa min al-akhbār* (Beirut, 1326/2005), p. 680 (reconciling this view with other reports permitting their sale without condition). At al-Ṭūsī, *al-Istibṣār*, pp. 680–1, one finds the view that *ummahāt al-awlād* are assigned to the inheritance share of their child/ren, leading to their manumission. This is not the only dimension of slave concubinage on which Twelver jurists disagree with their Sunnī counterparts. For the opinion that masters can ‘lend out’ their slave women to others for sexual use – an opinion the author acknowledges as scandalous to Sunnī jurists – see al-Ṭūsī, *al-Istibṣār*, pp. 537–8. One finds this view amply attested in other Twelver *ḥadīth* compilations – e.g. *al-Kāfi* (Beirut, 1328/2007), V, pp. 282–4. For another example of ‘sexual hospitality’, see Ibn al-Mundhir, *al-Awsaṭ min al-sunan wa l-ijmāʿ wa l-ikhtilāf*, ed. Muḥammad °Abd al-Salām (al-Fayyūm, 2009), VIII, p. 402.

26. On the dynamics of this integration, see Urban, *Conquered Populations in Early Islam*, pp. 106–39. On apocalyptically inflected prejudice: pp. 122–3. See also Patricia Crone, *The Nativist Prophets of Early Islamic Iran: Rural Revolt and Local Zoroastrianism* (New York, 2012), pp. 9–11. For a rejoinder to the overemphasis on the pre-eminence of the *mawālī* (more generally) in scholarship, see Harald Motzki, ‘The Role of Non-Arab Converts in the Development of Early Islamic Law’, *Islamic Law and Society* 6.3 (1999), pp. 293–317. Majied Robinson has argued that, while prejudice against the *hujanāʾ* existed, we cannot assume it was the norm: *Marriage in the Tribe of Muhammed A Statistical Study of Early Arabic Genealogical Literature* (Berlin, 2020), p. 122.

27. Robinson, *Marriage*, p. 107. The novelty of the institution receives further emphasis on pp. 110–11: it ‘contrasted with the prevailing norms of every major Near Eastern religious practice of the conquest era, including that of the pre-Islamic *Ḥijāz*’.

28. Crone, *The Nativist Prophets*, p. 16.

The fact that conversion enabled people to change their lives for the better in material terms in no way implies they converted insincerely: it is after all a good deal easier to believe in the truth of ideas that work wonders than it is to deny their truth while still accepting that they have wondrous effects.²⁹

Not all such forms of membership were voluntary, of course. But even enslavement, which radically deracinated people and admitted them to a new society ultimately contributed to the process of integration. It is not without reason that various *ḥadīths* speak of persons being ‘dragged to paradise in chains’. As Ibn Ḥajar (d. 852/1449) explains, citing a variant report, they are ‘a non-Arab people (°*ajam*) captured by the *muhājirūn* (emigrants), who enter them into Islam forcibly’: in eschatological terms, the captives’ embrace of Islam, whatever its original circumstances, ultimately leads them to felicity.³⁰ In short, *jihād* and the related practice of slave concubinage functioned (to use a phrase coined in another context) as a ‘massive assimilation machine’.³¹ *Jihād* redirected the energies previously expended on intertribal raiding *outwards*, organising this no longer primarily on the basis of kinship, but on confession. The tribe became the *Umma*, or as Watt so felicitously put it, the ‘super-tribe’.³² At least in principle, loyalty was reorganised along the same lines: the believers are meant to be ‘unyielding towards the unbelievers, full of mercy among themselves (Q48:29)’. Donner has emphasised, in this vein, how ‘members of the *umma* were to sever ties with the tainted society of pagans, even if they were one’s close kinsmen’.³³ Alongside this new vision of the confessionally organised society came an ‘apocalyptic eschatology . . . [as part of which] the Believers would literally inherit the Earth from the sinful, just as the followers of earlier prophets had’.³⁴

29. Ibid., p. 14.

30. *Faṭḥ al-bārī bi-sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muḥammad Fuʾād ʿAbd al-Bāqī et al (Cairo: al-Maktaba al-salafiyya, n. d.), VI, p. 145. See also ‘Slave-Girls or Prostitutes?’, p. 49. Note that the term *muhājir* is used here in its original sense of migrant to the garrison cities to participate in the *jihād*, as argued by Crone in ‘The First-Century Concept of “Hijra”’, *Arabica* 41.3 (1994), 352–87 (at p. 367). See also Patricia Crone and Michael Cook, *Hagarism: The Making of the Islamic World* (Cambridge, 1977), p. 130.

31. For this phrase, see Sean W. Anthony, ‘Muḥammad, the Keys to Paradise, and the *Doctrina Iacobi*: A Late Antique Puzzle’, *Der Islam* 91.2 (2014), 243–65 (at p. 261).

32. *Muhammad: Prophet and Statesman* (Oxford, 1974), p. 95. Admittedly, fighting units were organised on the basis of (supposed) kinship, and early settlement in the garrison cities followed similar patterns.

33. Donner, *The Early Islamic Conquests*, p. 57. See also pp. 75–6.

34. Fred Donner, *Muhammad and the Believers: At the Origins of Islam* (Harvard, 2010), pp. 81–2. For a work that puts even greater emphasis on the apocalyptic element in

II. APOCALYPTIC, SYMBOLIC VIOLENCE, SLAVE CONCUBINAGE AND *DAWLA*

... [W]e dug Sulayman ibn Abd al-Malik up out of the soil in Dabiq, but we found only his spine, his ribs and his skull, so we burnt them. And we did the same to other members of that family.³⁵

There is no better way to inaugurate a new political order (*dawla*) than through violence. Examples are legion, including the °Abbāsid desecration of Umayyad tombs. This violence can also have apocalyptic overtones, and undoubtedly much of the related *ḥadīth* material was put into circulation by propagandists and popular preachers or storytellers (*quṣṣās*), eager to attract or retain an audience.³⁶ Scepticism about this material is also attested very early.³⁷ ISIS counted the restoration of slave concubinage as a harbinger of the eschaton, one of their more significant achievements as self-declared revivers of the *Umma*:

... [T]hey have restored the religion in its entirety, levying the poll-tax on the People of the Book and enjoining upon them the terms of °Umar (*al-shurūt al-°umariyya*); and they have enslaved the women and children of the unbelievers.³⁸

Enslavement and the imposition of the *dhimma* on non-Muslim populations are forms of symbolic violence.³⁹ The latter represents the subversion of what Ussama Makdisi has termed the ‘ecumenical frame’, an attempt to retrieve a

the Prophet’s teaching, see Stephen J. Shoemaker, *The Death of a Prophet: The End of Muhammad’s Life and the Beginnings of Islam* (Philadelphia, 2012), pp. 118–96.

35. °Umar b. Hāni°, as reported in Muḥammad b. Mun°im al-Ḥimyarī, *al-Rawḍ al-mi°ṭār fī khabar al-aqṭār*, ed. Iḥsān °Abbās (Beirut, 1974), p. 231, cited in Wasserstein, *Black Banners*, p. 178.

36. For concern that apocalyptic material was being foisted on the Prophet (under the rubric of *malāḥim* or *fitan*), see, for example, Ibn al-Jawzī, *Kitāb al-Mawḍū°āt*, ed. °Abd al-Raḥmān °Uthmān (Maṣūra, 1388/1968), III, pp. 189–99. For a revisionist view of the role of the *quṣṣās*, see Lyall Armstrong, *The Quṣṣās of Early Islam* (Leiden, 2016).

37. For one early example, see Ḍirār b. °Amr (d. c. 200/815), *Kitāb al-Taḥrīsh*, ed. Hüseyin Hansu and Mehmet Keskin (Istanbul, 2014), pp. 121–3. For a somewhat later critique, see Abū °Alī al-Jubbā°ī (d. 303/915–16, attrib.), *Kitāb al-Maqālāt*, ed. Özkan Şimşek, A. İskender Sarıca and Yusuf Arıkaner (Istanbul, 2020), p. 360.

38. *Al-Sabī*, p. 3. See also ‘The Revival of Slavery Before the Hour’.

39. Jurists debated how to exact the *jizya*, with some insisting on demeaning the payee. Much of this hangs on the well-known controversy about the interpretation of the phrase °*an yadin* in Q. 9.29. For one interpretation, see M. J. Kister, ‘°*An Yadin* (Qur°ān IX: 29): An Attempt at Interpretation’, *Arabica* 9 (1964), 272–8.

political order in which Islam was hegemonic.⁴⁰ Other revolutionary movements, perhaps more heavily invested in the chiliastic enterprise, did away with the toleration of non-Muslims altogether.⁴¹ There is, in any case, clearly no ignoring the prominence of eschatological themes in ISIS propaganda. The former title of their English-language magazine, *Dabiq*, itself proclaims this, as the reported site of apocalyptic clashes.⁴² Similarly, *ḥadīth* about the prevalence of *ummahāt al-awlād* – mothers ‘giving birth to their masters’ in the end times – loomed large in their literature. Younus Mirza has demonstrated that, while appealing to such tropes, the act of appropriation often shores up their understandings in the premodern tradition, according to which ‘eschatological *ḥadīths* should not legislate’.⁴³ Medieval commentators did not generally recognise these reports as a mandate for increasing the number of enslaved persons; they merely indicated the religious entropy and disorder that would mark the end of the world. The ‘giving birth to their masters’ element is suggestive of the upending of social norms. It is likely that, when first put into circulation, these *ḥadīth* reflected the conquest elite’s concerns about challenges to their status posed by the offspring of slave concubines. These so-called *hujanā*’ (‘mixed race’ persons), some variant reports mention, would figure among the followers of the Antichrist (*Dajjāl*), alongside ‘Turks, weavers, magicians, Uzbeks . . . and all the lowest type of people’.⁴⁴

Another significant and highly publicised element of ISIS’s redemptive violence was the systematic destruction of tombs. This does not seem to have possessed the same apocalyptic resonances as the reinstatement of slave concubinage, though in the Shī‘ī *ḥadīth* corpus one does find reports on the Mahdī’s desecration of the graves and bodies of the enemies of the Imāms.⁴⁵ This practice instead draws on the strictures against tomb construction and veneration found

40. Ussama Makdisi, *Age of Coexistence: The Ecumenical Frame and the Making of the Modern Arab World* (Oakland, CA, 2019), pp. 6–11.

41. Most famously, the Almohads, who compelled non-Muslim residents of their territories to convert to Islam. For possible explanations of their motives in doing so (the most convincing of which links this to Ibn Tūmart’s status as *Mahdī*), see Maribel Fierro, ‘The Religious Policy of the Almohads’, in *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (Oxford, 2016), pp. 679–92 (at pp. 684–5).

42. Wasserstein, *Black Banners*, Chapter 7.

43. Younus Mirza, “‘The Slave Girl Gives Birth to Her Master’: Female Slavery from the Mamlūk Era (1250–1517) to the Islamic State (2014–)”, *Journal of the American Academy of Religion* 85.3 (2017), 577–99 (at p. 594).

44. David Cook, *Studies in Muslim Apocalyptic* (Princeton, 2002), p. 99.

45. For example, Muḥammad Bāqir al-Majlisī, *Biḥār al-anwār* (Beirut, n. d.), XXII, p. 232.

in numerous *ḥadīths* attributed to the Prophet.⁴⁶ Postclassical Islam was, like late medieval Catholicism, a veritable ‘cult of the living in the service of the dead’, with tombs serving as the confluence of the divine and terrestrial realms, places where one sought healing, sanctuary and intercession. These sites enjoyed the esteem of both commoners and learned elite, as emphasised by Christopher S. Taylor.⁴⁷ By the sixth/twelfth centuries their location in a sacred geography and their patronage by rulers could be taken for granted: the construction of lavish tomb complexes typically indicated rulers’ particular religious sympathies, as in the case of the Ottomans and Ibn ʿArabī (d. 638/1240).⁴⁸ There were often objections from the learned elite to certain excesses at these sites (e.g. mingling of the sexes), but more categorical condemnation seems to have been muted. Violence and demolition on these lines was, in the ordinary course of affairs, exceedingly rare.⁴⁹ Ibn ʿAbd al-Wahhāb (d. 1206/1792) – a figure of no little influence on the theology of ISIS – engaged in this sort of behaviour, famously levelling the domed edifice on the supposed grave of Zayd b. al-Khaṭṭāb (d. 11/632).⁵⁰ He also reinstated the punishment of lapidation for adultery, in much the same way as ISIS would later proclaim.⁵¹ The chronicler ʿUthmān b. Bishr (d. 1290/1873) observes that Ibn ʿAbd al-Wahhāb’s stoning of an adulteress (subsequent to the tomb demolition) marked a turning point in his career: ‘following this his affair became great, his fortune (*dawla*) increased and the recognition of God’s unicity (*tawḥīd*) spread’.⁵² Without necessarily recalling the end times or the millenium, then, acts of symbolic violence signal the advent of a new order, or *dawla*. While the use of symbolic violence is neither novel nor distinctively Muslim – think of the narratives of founding violence in nationalist historiography – ISIS’s

46. Some of the more well-known ones are listed by Ondřej Beránek and Pavel Ťupek in their *The Temptation of Graves in Salafi Islam: Iconoclasm, Destruction and Idolatry* (Edinburgh, 2018), pp. 21–2.

47. Christopher S. Taylor, *In the Vicinity of the Righteous: Ziyāra and the Veneration of Muslim Saints in Late Medieval Egypt* (Leiden, 1998). See also Beránek and Ťupek, *The Temptation of Graves*, pp. 36–7.

48. Mustafa Tahrāli, ‘A General Outline of the Influence of Ibn ʿArabī on the Ottoman Era’, ibnarabisociety.org/influence-of-ibn-arabi-on-the-ottoman-era-mustafa-tahralli/.

49. For exceptions, see, for example, Beránek and Ťupek, *The Temptation of Graves*, p. 74.

50. ʿUthmān b. Bishr al-Najdī, *Unwān al-majd fī tārikh najd*, ed. ʿAbd al-Raḥmān b. ʿAbd al-Laṭīf Āl al-Shaykh (Riyadh, 1402/1982), I, p. 39.

51. It is worth noting that polling indicates widespread support for the stoning of adulterers in parts of the Muslim-majority world (particularly MENA and South Asia): www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-beliefs-about-sharia/.

52. ʿUthmān b. Bishr, *Unwān al-majd*, p. 39.

emphasis on apocalypticism seems to have differentiated it from other modern Sunnī militant groups.

According to the Arabist and lexicographer Edward William Lane (d. 1293/1876), a *dawla* signifies ‘a turn, mutation, change or vicissitude of time, or fortune . . . from an unfortunate and evil, to a good and happy state or condition’.⁵³ The word features in apocalyptic texts, effectively as a synonym for the °Abbāsids and their revolution. In the *Kitāb al-Fitan* of Nu°aym b. Ḥammād (d. 228/843–4), Ibn °Abbās, the progenitor of the dynasty, asks °Alī (the forbear of their °Alid rivals): ‘[W]hen will our turn (*dawla*) be, O Abū l-Ḥasan?’⁵⁴ Elsewhere in the text, Mu°āwiya asks anxiously when that turn will come, only to be told it will emerge in the end of days (*ākhir al-zamān*) at the hands of the °Abbāsids’ Khurāsānī supporters.⁵⁵ Other apocalyptic references to those clad in black, the regime’s colour, are decidedly negative.⁵⁶ Both detractors and supporters of ISIS similarly invoked these reports for and against their causes, including a figure no less influential than the former Muftī of Egypt, Ali Gomaa.⁵⁷ Evidently, much was at stake in the interpretation of these tumultuous events.

III. LEGALISED VIOLENCE AND SLAVE CONCUBINAGE IN THE CONQUEST SOCIETY

The Islamic State in northern Iraq from 2014 attempted to restore a conquest society but it was horrible in new ways because its context was so different. Max Weber observed that modern conditions are not conducive to saintliness.⁵⁸

The reinstatement of a conquest society looks decidedly odd in a world of nation-states. Insofar as the state-sanctioned repression of minorities occurs in the modern period, it is meant to be the outcome of properly bureaucratic norms, Arendt’s ‘banality of evil’. We do know that ISIS kept meticulous records and

53. Edward William Lane, *An Arabic-English Lexicon* (Cambridge, 1984 repr.), I, p. 934.

54. *The Book of Tribulations*, p. 100.

55. *Ibid.*, p. 101.

56. In one report, the Prophet says pointedly: ‘What do I have to do with the °Abbāsids? They have divided my community, forced them to wear black clothes, so may God force them to wear clothes of fire!’ (*The Book of Tribulations*, p. 101).

57. Citing the *Kitāb al-Fitan*, see ‘Muftī of Egypt: °Alī b. Abī Ṭālib warned against Dā°ish’, gerasnews.com/print/160291. On ISIS and religious authority, see the article by Sohaira Siddiqui, ‘Beyond Authenticity: ISIS and the Islamic Legal Tradition’, www.jadaliyya.com/details/31825/beyond-authenticity-isis-and-the-islamic-legal-tradition.

58. Christopher Melchert, *Before Sufism: Early Islamic Renunciant Piety* (Berlin, 2020), p. 194.

furnished all manner of official certification for procedures, including manumission.⁵⁹ This state-building dimension of the ISIS enterprise distinguished it in important ways from other militant organisations such as al-Qāʿida. Admittedly, ISIS owed much to the playbook of al-Qāʿida strategist Abū Bakr Nājī – namely, the 2004 *Idārat al-tawaḥḥush* (‘Management of Savagery’).⁶⁰ This work envisions the establishment of a caliphate in three phases, beginning with coordinated violence against sites such as oil facilities and tourist resorts in weak states. After many such attacks, the target state would be crippled, the breakdown of law and order permitting the emergence of rudimentary militant-operated alternatives. Once these solidify, the third and final stage would ensue, with the forcible unification of pre-existing militias under a single banner, the establishment of public services and the proclamation of a new order.⁶¹ The US-led invasion achieved the first objective, crippling Iraq’s infrastructure; sectarian violence and regime incompetence accomplished much of the rest. In line with Nājī’s strategy, ISIS quickly consolidated their rule and established ministries (using the deliberately archaic *dīwān* in preference to *wizāra*),⁶² including one devoted to the spoils of war. They ‘set up . . . a detailed bureaucracy of sex slavery, including sales contracts notarized by its Islamic courts’.⁶³ The Yezidis found themselves on the business end of this bureaucratic and military machine in 2014.

The offer of terms by ISIS to local Christian populations – namely, the choice between conversion and payment of the poll tax – was not extended to Yezidi communities.⁶⁴ This was on the grounds that the Yezidis as non-Scripturaries (*ghayr kitābīs*) were not entitled to state protection, one of several mainstream views in classical *fiqh*, particularly associated with the Shāfiʿites (and sundry

59. On this theme, see Mara Revkin, *The Legal Foundations of the Islamic State*, Brookings Foundation: U.S. Relations with the Muslim World, No. 26, July 2016, available online at www.brookings.edu/wp-content/uploads/2016/07/brookings-analysis-paper_mara-revkin_web_v2.pdf.

60. On this work, see, for example, Fawaz Gerges, *ISIS: A History* (Princeton, 2017), pp. 36–42. See also McCants, *The ISIS Apocalypse*, pp. 82–4. See also Lawrence Wright, ‘ISIS’s Savage Strategy in Iraq’, *The New Yorker*, 16 June 2014, www.newyorker.com/news/daily-comments/isiss-savage-strategy-in-iraq.

61. Abū Bakr Nājī, *Idārat al-tawaḥḥush*, pp. 19–20, 23–4, etc. Available online at noor-book.com/كتاب-إدارة-التوحش-pdf.

62. Wasserstein, *Black Banners*, p. 59. See, alternatively, McCants, *The ISIS Apocalypse*, p. 21.

63. Gerges, *ISIS: A History*, p. 31. See also McCants, *The ISIS Apocalypse*, pp. 111–14.

64. For a translation of the terms offered to the Christians of al-Raqqa, closely modelled on the ‘Pact of ʿUmar’, see Wasserstein, *Black Banners*, pp. 153–5.

jurists from other schools).⁶⁵ Under Ottoman rule – good Ḥanafites theoretically tolerant of non-Arab pagans – Yezidis had not been considered *dhimmīs* and their religion ‘was not protected in any way until the Tanzimat’.⁶⁶ Even after the emergence of the ecumenical frame in the mid-nineteenth century, Yezidis remained subject to official persecution, including punitive expeditions and forcible conversion under the pious °Abd al-Ḥamīd II (r. 1293/1876 – 1327/1909).⁶⁷ Persecution no doubt owed much to the perception of the Yezidis of Mt Sinjar as an obstreperous tribal population who resisted integration into the modernising Ottoman state, including conscription into its army. But it may also owe something to the religious conceptualisation of the group; syncretic religions identified as quasi-Islamic would not necessarily have been indulged by jurists as liable to pay the *jizya*.

Though not identifying as Muslims today, the status of Yezidis historically is somewhat mysterious. They are first apparently referred to in sources from the sixth/twelfth century as devotees of the Umayyad Yazīd b. Mu°āwiya (r. 60/680 – 64/683), but this identification seems less than certain. Other authors, such as Ibn Kathīr (d. 774/1373), mention Kurdish groups who ‘had forgotten their ancient religion, Magism [sic], and begun to accept another religion, a hybrid with Islam’.⁶⁸ Açıkyıldız concludes that this is a case of ‘syncretism between Sufi Islam and ancient Iranian religions’, a view essentially shared by ISIS.⁶⁹ This makes the Yezidis comparable to other such groups in the Middle East,

65. Wasserstein, *Black Banners*, p. 31. See also ‘The Revival of Slavery Before the Hour’, pp. 14–15. For a valuable summary of the divergent views on the question, see Yohanan Friedmann, *Tolerance and Coercion: Interfaith Relations in the Muslim Tradition* (Cambridge, 2003), pp. 54–86. For a list of religious groups entitled (or otherwise) to tolerance, see the Shāfi°ite °Abd al-Qāhir al-Baghdādī’s *Kitāb Uṣūl al-dīn* (Istanbul, 1346/1928), pp. 324–8. Zoroastrians, though not strictly speaking Scriptuaries, were generally afforded protection by the jurists based on various *ḥadīth*.

66. Yohanan Friedmann, ‘Minorities’, in *Islamic Political Thought: An Introduction*, ed. Gerhard Bowering (Princeton, 2015), pp. 123–34 (at p. 129).

67. On °Abd al-Ḥamīd’s policies towards the Yezidis, see Nelida Fuccaro, ‘Communalism and the State in Iraq: the Yazidi Kurds c. 1869–1940’, *Middle Eastern Studies* 36.2 (1999), 1–26 (at pp. 3–6).

68. Birgül Açıkyıldız, *The Yezidis: The History of a Community, Culture and Religion* (London, 2014), p. 38. For the origins and history of the community generally, see Chapter 1. The term *majūs* was often used to denote pagans generally. See also ‘The Revival of Slavery Before the Hour’, p. 15.

69. Açıkyıldız, *The Yezidis*, p. 37. Yezidis are described as monotheists believing in the deity *Xwēde*, though they direct their prayers to an angel–demiurge, *Tawūsi Melek*, whence their association by some observers with devil worship: pp. 71, 73–8.

most prominently the Nuṣayrī-ʿAlawīs, also the subjects of repeated persecution.⁷⁰ Unlike the Nuṣayrī-ʿAlawīs and the Twelvers, however, the Yezidis were not denounced as apostates, but as non-Scripturaries or pagans.⁷¹ The evidence suggests that this view was operationalised on the ground. In one early encounter near the northern Iraqi village of Kocho in August 2014, an ISIS commander met with the local Yezidi headman (*mukhtār*) to demand that the residents embrace Islam. After nearly a fortnight of negotiation, by which point it was obvious that conversion was not forthcoming, residents were herded into a school building where the men and pubescent boys were separated from the others. After the seizure of some property, they were transported a few hundred metres away from the village and shot *en masse*. The women and remaining children were later taken elsewhere to be sold.⁷²

The sale of Yezidi women and girls as slave concubines attracted international media, as well as scholarly, attention beginning in August 2014.⁷³ A number of ISIS documents were subsequently published online that articulated the juristic argument for enslavement. Some of these were translated in abridged form into English, attracting further comment from the news media and human rights NGOs.⁷⁴ This is not the place for an analysis of these journalistic and NGO

70. On the Nuṣayrī-ʿAlawīs, see Meir Bar-Asher and Aryeh Kofski, *The Nuṣayrī-ʿAlawī Religion: An Enquiry into its Theology and Liturgy* (Leiden, 2002). See also Yaron Friedman, *The Nuṣayrī-ʿAlawīs: An Introduction to the Religion, History and Identity of the Leading Minority in Syria* (Leiden, 2010).

71. A point emphasised in ‘The Revival of Slavery Before the Hour’, where they are described as ‘a pagan minority existent for ages in the regions of Iraq and Shām’, p. 14.

72. Valeria Cetorelli and Sareta Ashraph, ‘A Demographic Documentation of ISIS’s Attack on the Yazidi Village of Kocho’, LSE Middle East Reports, 2019, esp. pp. 8–13, <http://eprints.lse.ac.uk/101098/>. See also Donatella Rovera, ‘Testimonies from Kocho: The Village ISIS Tried to Wipe Off the Map’, www.amnesty.org/en/latest/news/2014/08/testimonies-from-kocho-the-village-isis-tried-to-wipe-off-the-map/. Further information on the logistics of enslavement can be found in Nadia al-Dayel, Andrew Mumford and Kevin Bales, ‘Not Yet Dead: The Establishment and Regulation of Slavery by the Islamic State’, *Studies in Conflict and Terrorism* (2020), doi.org/10.1080/1057610x.2020.1711590. See also McCants, *The ISIS Apocalypse*, pp. 112–13.

73. Some of the more widely circulated pieces include Rukmini Callimachi’s ‘ISIS Enshrines a Theology of Rape’, nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.amp.html, Graeme Wood’s ‘What ISIS Really Wants’, theatlantic.amp/article/384980/, and Kecia Ali’s insightful ‘Redeeming Slavery: The “Islamic State” and the Quest for Islamic Morality’, www.mizanproject.org/journal-post/redeeming-slavery/.

74. For example, ‘The Culture of Rape Within ISIS, and the Questions That Arise’, nytimes.com/2016/03/20/world/middleeast/the-culture-of-rape-within-isis-and-the-questions-that-arise.html. See also Kenneth Roth, ‘Slavery: The ISIS Rules’, www.hrw.org/news/2015/09/05/slavery-isis-rules.

interventions, which has already been undertaken very ably by others. Instead, we propose to analyse the most comprehensive ISIS publication on the question, the aforementioned *al-Sabī: aḥkām wa masā'il*. It is not clear exactly when in 1435/2014 the document was first published, though one presumes this took place shortly after the attack on Sinjar, beginning in early August. We do know that ISIS field commanders had already solicited a *fatwā* on the treatment of Yazidis in advance of the campaign from the relevant bureau, *Dīwān al-Buḥūth wa l-Iftā'*.⁷⁵ This suggests there may have been plans to enslave the Yazidis some time before the assault.

IV. SLAVE CONCUBINAGE IN A POST-ABOLITION WORLD

The use of scriptural sources and history is not only important for religiously legitimizing their actions, it also promotes their overall objectives. In other words, they subject scripture and history for their own political and religious motivations . . . [ISIS] often steps away from the literal meaning of texts where necessary.⁷⁶

A perusal of the voluminous literature produced by ISIS demonstrates that they engaged very closely with the Islamic legal tradition: this is certainly the case for slave concubinage.⁷⁷ The argument that this engagement was shaped by strategic needs, while well-taken, can and has been directed meaningfully at some of their detractors. The condemnatory 'Open Letter to Baghdadi', signed by a galaxy of leading Sunnī 'ulamā' in September 2014, is, in the words of Kecia Ali, a document that 'makes a hash of both history and the classical tradition, with its ahistorical declarations and simplistic proclamations'.⁷⁸ Her broader goal here is to emphasise that Islam is a living, dynamic religion that cannot

75. 'Prior To the Taking of Sinjar', according to 'The Revival of Slavery Before the Hour', p. 14. See also al-Dayel, Mumford and Bales, 'Not Yet Dead', p. 3.

76. Sohaira Siddiqui, 'Experts Weigh In (Part 2): How Does ISIS Approach Islamic Scripture?', www.brookings.edu/blog/markaz/2015/03/26/experts-weigh-in-part-2-how-does-isis-approach-islamic-scripture/amp/.

77. For analysis, see Brown, *Slavery and Islam*, pp. 256–8. See also Bernard K. Freamon, *Possessed by the Right Hand: The Problem of Slavery in Islamic Law and Muslim Cultures* (Leiden, 2019), pp. 465–78.

78. 'ISIS and Authority', www.feminismandreligion.com/2015/02/24/isis-and-authority-by-kecia-ali.amp/. For the text of the letter, see lettertobaghdadi.com. McCants makes the point that 'anyone who reads and acts on scripture' engages with it tendentiously (*The ISIS Apocalypse*, p. 150).

be reduced to its textual heritage, a point that surely bears repeating.⁷⁹ Ali calls attention to the ways in which ‘consensus’ is invoked to marginalise not just violent fringe groups, but those advocating, for example, greater gender equality. In a thoughtful addition to her now-classic *Sexual Ethics and Islam*, Ali further adds that while ‘grotesque and violent’, the ISIS literature on the subject seems quixotically ‘sincere . . . [it] contemplates the integration of slaves into a new sort of society – or rather, a very old one, harking back to (an imagined) Muslim community’.⁸⁰ Examination bears these observations out.

Al-Sabī is a carefully researched treatise comprised of eight sections (e.g. ‘the command to treat captives and slave women well’). The text begins with a discussion of technical terms, before proceeding to explore the licitness of slave concubinage, the need for good treatment of those so enslaved (*al-amr bi-l-iḥsān li-l-sabāya*) and whether slave women of various confessional backgrounds (Scripturaries, pagans and apostates) can be used sexually. The text ends with a section on miscellaneous issues, including such questions as the dissolution of captives’ marriages. The treatise is introduced by the head (*raʿīs*) of the relevant ISIS bureau, Turkī al-Bin^ʿalī, whose authorship has been assumed here. Given his role as ISIS’s star jurist, it seems reasonable to assume that he played the dominant role in writing and researching it. The possibility that *al-Sabī* may be a collective enterprise cannot, however, be ruled out.

Al-Sabī is best characterised as a sober and scholarly exercise reflecting a high degree of juristic acumen. Accompanying frequent reference to the teachings of the four Sunnī legal schools, to whom due respect is afforded, are the typical concerns for careful definition of terms, both legal and lexical.⁸¹ Al-Bin^ʿalī evinces a decided fondness for jurists who are known for their relative independence from school doctrine, particularly Ibn al-Qayyim (d. 751/1350), his *shaykh* Ibn Taymiyya (d. 728/1328), Ibn Qudāma (d. 620/1223) and (on one particularly controversial point) al-Shawkānī (d. 1250/1834), as well as others of a textualist bent. These are highly regarded for their embodiment of the value of *taḥqīq* (‘verification’).⁸² *Al-Sabī* is by no means a work that eschews the cumulative

79. This has been emphasised in the second edition of her important *Sexual Ethics and Islam: Feminist Reflections on Gender, Hadith, and Jurisprudence* (Oxford, 2016), Chapter 3 (esp. pp. 67–71).

80. Ali, *Sexual Ethics and Islam*, p. 70.

81. *Al-Sabī*, for example, p. 4 (on the definition of *sabī* and the typology of spoils of war).

82. On this point (omitting Ibn Qayyim and Ibn Qudāma for contextual reasons), see Ahmed El Shamsy, *Rediscovering the Islamic Classics: How Editors and Print Culture Transformed an Intellectual Tradition* (Princeton, 2020), pp. 55–60. On the modern appropriation of Ibn Taymiyya, see El Shamsy, *Rediscovering the Islamic Classics*, pp. 182–91.

Sunnī legal tradition in favour of a *de novo* engagement with scriptural texts, however. Departures from the teachings of the *madhāhib* are exceptional, and are always conscientiously indicated. Al-Bin^ʿalī is invested in the pluralism of classical *fiqh*: for his arguments to ‘work’, they need only reflect the teaching of one of the four schools, or at the very least scholars of stature. *Ḥadīths* are for the most part not cited directly, but only as they occur in the writings of others (in twenty-two of thirty-four cases, ‘embedded’ citations, below). The same is true, incidentally, of the Qur^ʾān. Page and volume references are scrupulously furnished. As far as one is able to tell, material is quoted faithfully, without any distortion of its original sense.⁸³ The table below hopefully conveys a sense of the range and depth of al-Bin^ʿalī’s engagement with the premodern tradition. Further comments on method may be found in the appendix to this chapter.⁸⁴

What is one to make of the seemingly low proportion of the total (26.8 per cent) attributable directly to al-Bin^ʿalī? In part, this is a function of authority. The author is aware that his opinions bear no weight in themselves and are only compelling to the extent that they can be demonstrated to belong to the tradition. Secondly, this pattern of textual deployment is familiar to anyone knowledgeable of the literature (presumably, his audience). As Merlin Swartz observes of the *Kitāb al-Quṣṣās wa l-mudhakkirīn* of Ibn al-Jawzī (d. 597/1200): ‘[S]omewhat more than three-quarters of the work is taken from other, and for the most part earlier, sources’.⁸⁵ This is not to repeat the claim that either lack originality, which can be exercised through choice and arrangement of material.⁸⁶ As will shortly become clear, furthermore, authors’ agency is at work in their arbitration between existing opinions, something al-Bin^ʿalī does with some flair. The diversity of sources used (thirty-six in total) indicates both facility with the tradition and the ‘wide’ reading practices noted by Ahmed El Shamsy in his outstanding recent study of Arabic print culture. The Internet (together with other factors)

83. A random sampling of references to premodern legal texts was cross-checked to verify accuracy. The author does not indicate which editions were used, but many of the relevant works have been digitised and are available in searchable form online.

84. For the counting words to establish relative importance, see Antonia Bosanquet’s valuable ‘Minding their Place: Space and Religious Difference in Ibn al-Qayyim’s *Aḥkām al-dhimma*’, unpublished PhD dissertation, Freie Universität, Berlin, 2016, p. 72. The method used to collect the data above is explained in the appendix to this chapter.

85. Ibn al-Jawzī’s *Kitāb al-quṣṣās wa l-mudhakkirīn* (Beirut, 1971), p. 70. I thank Reyhan Durmaz for kindly (and very promptly) providing me with the page number.

86. We still await a scholarly treatment of the notion of plagiarism in Islamic scholarly culture. A number of studies have been addressed to the question of theft of verse (*sariqa*), but this is irrelevant here. For some useful preliminary remarks, see Joel Blecher, *Said the Prophet of God: Hadith Commentary Across a Millennium* (Berkeley, 2018), pp. 57–63.

Table 1 Citations of scholars in *al-Sabī: aḥkām wa masāʾil*

Authority/Text Cited	Citations (Embedded)	Words	%
Turkī al-Bin [°] alī (d. 1438/2017): author	—	1,669	26.8
Ibn al-Qayyim (d. 751/1350): various works, Ḥanbalī	8	1,462	23.5
Muslim b. al-Ḥajjāj (d. 261/875): <i>Ṣaḥīḥ</i>	9 (7)	530	8.5
Ibn Taymiyya (d. 728/1328): various works, Ḥanbalī	10	414	6.7
Al-Bukhārī (d. 256/870): <i>Ṣaḥīḥ</i>	7 (2)	358	5.8
Ibn Qudāma (d. 620/1223): <i>al-Mughnī</i> , Ḥanbalī	7	313	5
Qur ^ʿ ān	26 (22)	264	4.2
Abū Ishāq al-Shirāzī (d. 476/1083): <i>al-Muhadhdhab</i> , Shāfi ^ʿ i	4	155	2.5
Ibn [°] Abd al-Barr (d. 463/1071): various works, Mālikī	2 (2)	152	2.4
Al-Shawkānī (d. 1250/1834): <i>Nayl al-awṭār</i> , independent	3	148	2.4
Abū Yūsuf (d. 181/798): <i>Kitāb al-Kharāj</i> , Ḥanafī	2	141	2.3
Aḥmad b. Ḥanbal (d. 241/855): <i>Musnad</i>	9 (5)	132	2.1
Al-Qurṭubī (d. 621/1273): <i>Tafsīr</i> , Mālikī	2	103	1.7
Ibn Kathīr (d. 774/1373): <i>Tafsīr</i> , Shāfi ^ʿ i	1	100	1.6
Abū Dāwūd al-Sijistānī (d. 275/889): <i>Sunan</i>	6 (2)	85	1.2
[°] Abd al-Razzāq al-Ṣan [°] ānī (d. 211/827): <i>Muṣannaf</i>	6 (2)	56	0.9
Al-Tirmidhī (d. 279/892): <i>Sunan</i>	5 (3)	49	0.8
Al-Naḥḥās (d. 338/950): <i>Ma[°]ānī al-Qur^ʿān</i>	1 (1)	46	0.7
Al- [°] Adawī (d. 1189/1775): <i>Hāshiyya</i> , Mālikī	1	42	0.7
Al-Ṭabarī (d. 310/923): <i>Tafsīr</i>	2 (1)	41	0.7
Ibn Manẓūr (d. 711/1311): <i>Lisān al-[°]arab</i>	2	32	0.5
Al-Shāfi ^ʿ i (d. 204/820): <i>Kitāb al-Umm</i>	1	31	0.5
Ibn al-Humām (d. 861/1457): <i>Faṭḥ al-qadīr</i> , Ḥanafī	1	29	0.5
Al-Māwardī al-Shāfi ^ʿ i (d. 450/1058): <i>al-Aḥkām al-sulṭāniyya</i>	1	28	0.4
Al-Wāqidi (d. 207/823): <i>Kitāb al-Maghāzī</i>	2	23	0.4
[°] Amr b. Kulthūm (d. 584 CE): <i>Mu[°]allaqa</i>	1	10	0.2
Al-Kāsānī (d. 587/1191): <i>Badā^ʿi[°] al-ṣanā^ʿi[°]</i> , Ḥanafī	3	0	0
Abū Ya [°] lā al-Ḥanbalī (d. 458/1066): <i>al-Aḥkām al-sulṭāniyya</i>	2	0	0
<i>Al-Mawṣū[°]a al-fiḥhiyya al-kuwaytiyya</i> (general reference work)	1	0	0
Al-Fayrūzabādī (d. 817/1415): <i>al-Qāmūs al-muḥīṭ</i>	1	0	0
Al-Maqqarī (d. 770/1368): <i>al-Miṣbāḥ al-munīr</i>	1	0	0
Al-Nasā ^ʿ i (d. 303/915): <i>Sunan</i>	1 (1)	0	0
Ibn [°] Ābidīn (d. 1252/1836): <i>Radd al-muḥṭār</i> , Ḥanafī	1	0	0
Al-Khurashī (d. 1090/1679): <i>Sharḥ al-Khurashī[°] alā l-Khalīl</i> , Mālikī	1	0	0
Al-Ābī (d. 1335/1916): <i>al-Thamar al-dānī</i> , Mālikī	1	0	0
Al- [°] Abdari (d. 897/1492): <i>al-Tāj wa l-iklīl</i> , Mālikī	1	0	0
Shams al-Dīn al-Ramlī (d. 1004/1596): <i>Nihāyat al-muḥṭāj</i> , Shāfi ^ʿ i	1	0	0
Shams al-Dīn al-Maqdisī (d. 682/1283): <i>Sharḥ al-Kabīr</i> , Ḥanbalī	1	0	0
TOTAL	134 (50)	6,223	103⁸⁷

87. For an explanation of this figure, see the appendix.

has been responsible for ‘a revolution in the availability of edited texts . . . the opportunity for a comprehensive engagement with the Islamic tradition has been diffused to the level of the individual almost anywhere in the world’.⁸⁸ This unprecedented availability has proven destabilising. To any specialist, the ‘Open Letter to Baghdadi’ does not do at all well by comparison. It is almost as though the collective prestige of the signatories was expected to outweigh the careless, slipshod and fundamentally misrepresentative – if well-intentioned – nature of the work.⁸⁹

V. RELATING SLAVE CONCUBINAGE TO THE TRADITION: TWO CASE STUDIES

To demonstrate the nature of *al-Sabī*’s relationship to the Islamic legal tradition, two particularly important issues will be dissected here. The first, that of the taking of non-Scriptuaries (in this case, Yezidis) as slave concubines, represents a departure from the agreement of the four Sunnī schools, a departure al-Bin‘alī freely acknowledges.⁹⁰ The second is concubinage with apostates; here, the author sides with most of the jurists against the Ḥanafites, deploying a very creative historical argument to discredit the dissenting view.⁹¹

In the first (2006) edition of her *Sexual Ethics and Islam*, Kecia Ali hinted that classical views restricting concubinage to ‘Christian and Jewish (and perhaps Sabeen or Zoroastrian) captives’ may have overlaid earlier practice on this point.⁹² This is an important insight. Further research highlights the extent to which early jurists were at pains to equate the rules on licit marriage partners with those on slave concubines. The Qur’ān explicitly forbids *nikāḥ* with pagans (*wa lā tankiḥū l-mushrikāt*, Q2:221), while apparently permitting marriage to Scriptuary women (Q5:5). Much, of course, hinges on the interpretation of the word *nikāḥ* in the first verse; does it suggest marriage, or sexual intercourse (including concubinage) more generally? Similarly, does *mushrikāt* refer solely to female non-Scriptuaries, or does it encompass ‘People of the Book’ – Q5:5

88. El Shamsy, *Rediscovering the Islamic Classics*, p. 242.

89. One of the more egregious of many examples is the claim about the longstanding consensus against slavery. Many of the signatories come from countries where it has only very recently been abolished, as noted by McCants, *The ISIS Apocalypse*, pp. 112 (on Mauritania).

90. ‘As for sex with non-Scriptuary concubines (*wathaniyyāt*) . . . this has been forbidden by the great majority [of jurists] from the four schools and others; the opposite view [permitting this] has even been characterised as erratic (*shādhah*)!’ *Al-Sabī*, p. 15.

91. *Al-Sabī*, pp. 20–1. See also ‘The Revival of Slavery Before the Hour’, p. 15.

92. Ali, *Sexual Ethics and Islam*, p. 50.

notwithstanding – whom the Qurʾān also charges with *shirk* (e.g. Q9:31)? The relevant point for our purposes in this article is the relationship between marriage and slave concubinage. A number of early figures are said to have made explicit the analogy between the two – viz. whichever religious group it is prohibited to marry are likewise prohibited for purposes of concubinage. Saḥnūn (d. 240/854) attributes this formula to the Companion ʿAmmār b. Yāsir (d. 37/657), an ascription that strikes one as anachronistic.⁹³ We are on firmer ground with al-Shāfiʿī (d. 204/820), who makes the connection similarly explicit:

Any category (*ṣinf*) of unbelievers whose free women are licit to marry, are likewise permissible by virtue of ownership (*ḥall waṭʾ imāʾihim bi l-milk*) . . . it is not permissible to have sexual intercourse with a pagan woman (*mushrika ghayr kitābiyya*) by virtue of ownership, just as it is not permissible to marry their free-women.⁹⁴

The need for systematisation and the desire for doctrinal consistency evidently drove jurists to exclude the possibility that marriage with pagans was prohibited, while concubinage with them was licit.⁹⁵ This impulse seems to have affected jurists known for their textualist inclinations, no less than those who found *raʾy* more congenial. The great Ibn Ḥanbal (d. 241/855), who similarly upholds the prohibition, turns sheepish when questioned about the (obviously pagan) captives of the Battle of Awṭās (8/630), to which many of the *ḥadīths* on slave concubinage are linked.⁹⁶ Abū ʿUbayd al-Qāsim b. Sallām (d. 224/838), of similar textualist bent, is less embarrassed by these difficulties, but adopts the same conclusion: concubinage with pagans is prohibited, and the captives of Awṭās must have converted.⁹⁷

93. *Mā ḥarram Allāh min al-ḥarāʾir shayʾan illā ḥarrama mithlahū min al-imāʾ*: Saḥnūn, *al-Mudawwana al-kubrā* (Riyadh, n. d.), IV, p. 157. This report is presented without an *isnād*. Al-Shāfiʿī does furnish us with one for a comparable report: *Kitāb al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (al-Manṣūra, 1422/2001), VI, p. 5. The same formula is also attributed to Ibn Masʿūd (*al-Umm*, p. 6).

94. Al-Shāfiʿī, *al-Umm*, VI, p. 21.

95. Kecia Ali has noted the contribution of inter-jurist polemics to this increased systematisation. See *Marriage and Slavery in Early Islam* (Boston, MA, 2010), p. 1, etc.

96. Queried about the tribe of Hawāzin (‘were they not pagans?’), Aḥmad concedes that he is not sure. ‘I do not know if they converted or not’ (*lā adrī kānū aslamū am lā*). Put on the spot by a relevant *ḥadīth*, he feebly responds: ‘I do not know . . . perhaps they converted’. Al-Khallāl, *Aḥkām ahl al-milal*, ed. Sayyid Ḥasan (Beirut, 1414/1994), p. 168.

97. Abū ʿUbayd al-Qāsim b. Sallām, *al-Nāsikh wa l-mansūkh*, ed. Muḥammad b. Ṣāliḥ al-Mudayfar (Riyadh, n. d.), p. 98.

Al-Bin[°]alī makes no claim to originality in permitting the taking of *mushrikāt ghayr kitābiyyāt* as concubines, leaving Ibn al-Qayyim and al-Shawkānī to do the hard work for him. The latter is cited as invoking common sense to make his point: '[N]o sane person can hold that great numbers like those of the female captives of Awṭās all embraced Islam simultaneously of their own accord'.⁹⁸ To transcend the authority of the school-jurists, al-Bin[°]alī adduces the views of a number of the early Muslims (*salaf*) as evidence too.⁹⁹ The case is, as Ali suggests, not without its merits.

The question of taking apostates as concubines forms an interesting contrast to that of the Yezidis. The label 'apostate' is applied rather widely in ISIS literature to encompass rival Muslim groups, including not only the 'heterodox' Twelver-Shī'a and Druze, but also Sunnīs opposed to their caliphate.¹⁰⁰ ISIS possessed both the means and (presumably) the incentive to adopt the Ḥanafite view (shared by Ibn Taymiyya) permitting the taking of apostates as slave concubines. Somewhat surprisingly, however, al-Bin[°]alī sides with the majority (*jumhūr*). It is the way in which he does this that deserves comment. To invalidate the Ḥanafite argument that °Alī b. Abī Ṭālib (d. 29/661) took a woman from the apostate tribe of the Banī Ḥanīfa as a concubine, al-Bin[°]alī reaches creatively for the history books. Al-Wāqidi (d. 207/823) reports that the woman in question was black, and 'blackness is rare among the Arabs'.¹⁰¹ The accuracy of this claim notwithstanding, the suggestion is that the woman was a slave of the Banī Ḥanīfa, rather than a member of the tribe, and therefore not an apostate. That al-Bin[°]alī reaches this conclusion suggests that *al-Sabī: aḥkām wa masā'il* is more complex than a cynical appeal to tradition. The same pattern of serious engagement of the juristic literature is evident in other ISIS publications.¹⁰²

98. *Al-Sabī*, p. 18.

99. *Ibid.*, p. 17.

100. In their fondness for declaring other Muslims unbelievers (*takfīr*), they are much like certain of the early Mu[°]tazila. See Maher Jarrar (in collaboration with Sebastian Günther), *Doctrinal Instruction in Early Islam: The Book of the Explanation of the Sunna by Ghulām Khalīl (d. 275/888)* (Leiden, 2020), p. 117. On *takfīr* generally, see Camilla Adang, Hassan Ansari and Maribel Fierro (eds), *Accusations of Unbelief in Islam: A Diachronic Perspective on Takfīr* (Leiden, 2015).

101. *Al-Sabī*, p. 21.

102. Including the responsa (*fatāwā*) of al-Bin[°]alī himself. Some of these are available as recordings at www.archive.org/details/alsulami2/الشيخ+تركي+البنعلي +فتاوى+عبر+الاثير+الشيخ+تركي+البنعلي.mp3.

CONCLUSION

If Danton and Robespierre established modern bourgeois society while garbed in Roman costume, as it were, they did not do so in circumstances of their own making. The emergence of ISIS, similarly, was more than anything an outcome of the American invasion and occupation of Iraq, rampant sectarianism and decades of brutalisation by a despotic regime. But it is doubtful that these circumstances would have given rise to anything comparable had they so complemented each other half a century ago. The advent of a neo-Wahhābī conquest polity owes much to transnational elements that have only become relevant in the intervening decades, including Jihadist networks and ideology. It is within those constraints that men, Marx might say, make their own history. The example of (Lebanese) Tripoli is instructive. ‘In the late sixties’, Bernard Rougier writes, ‘it was the scene of intense militancy . . . an amalgam of Marxist references, slogans backing the Palestinian cause, and a desire for social reform shaped the political discourse of the period’.¹⁰³ Only slightly more than ten years later, with Lebanon in the throes of a civil war and an Israeli invasion, a ‘zeal for militant Islamism’ along Iranian lines arose. The *Ḥarakat al-Tawḥīd al-Islāmī* militia established de facto control over a few Tripolitan neighbourhoods and began ‘forbidding alcohol and imposing strict Islamic rules on the population’. One local Emir executed twenty-eight communist militants on charges of apostasy. Shortly thereafter, the Syrian army made short work of the militants.¹⁰⁴ It is against this backdrop of endemic violence, failed states and kleptocratic rule that ISIS’s appeal to the premodern juristic tradition must be understood. Within such constraints, it is possible to exercise one’s agency, to make history. The ‘reinstatement’ of slave concubinage, taking place in the radically altered conditions of the twenty-first century, is a case in point. In choosing to retrieve dormant aspects of the tradition, Turkī al-Bin^ʿalī (and others, no doubt) were making an interpretive choice. And, ultimately, people bear responsibility for their interpretive choices.¹⁰⁵

103. *The Sunni Tragedy in the Middle East: Northern Lebanon from al-Qāʿida to ISIS* (Princeton, 2015), p. 3.

104. Rougier, *The Sunni Tragedy*, pp. 10–11.

105. In her review of *Sexual Ethics and Islam*, Laury Silvers remarks (in this vein) that Ali ‘calls on contemporary Muslims to take responsibility for their own engagement of the intellectual tradition.’ See *Journal of Middle East Women’s Studies* 4.3 (2008), 134–6 (at p. 135).

APPENDIX:

METHODS USED IN ANALYSING THE SOURCES OF *AL-SABĪ*

Counting the words attributed to different sources in *al-Sabī* is less straightforward an exercise than it seems. After some deliberation, it was decided that *ḥadīth* compilations and other works cited in secondary fashion (e.g. Ibn al-Qayyim's frequent resort to the *Ṣaḥīḥs*) would be considered as independent sources. This is because such materials do not typically acquire their authoritativeness by virtue of citation, but are probative in and of themselves. This may give the misleading impression of broader engagement with the tradition than is actually the case – a risk we have chosen to take. Additionally, one will notice the percentage for total citation coming to 103 per cent; this reflects the rounding up of figures and the decision to count *ḥadīths* attributed to multiple collections separately. In order to preclude any potential skewing of the data, the number of citations is noted. This conveys a sense of the importance of particular sources to the author's argument, even when their word count remains modest. The supreme example of this is the Qur'ān, frequently but only ever economically deployed – often only part of a verse – and enjoying an epistemic status far above other sources. Additionally, al-Bin'ālī often provides references for the reader to follow up without these texts being quoted: these are the zero-word count entries.

Authors have been listed in order of word count and, where this is the same, in order of appearance in *al-Sabī*. Though *madhhab*-affiliation has been mentioned in cases where legal texts are referenced, this is not to suggest that jurists are reducible to their legal school. Ibn Taymiyya's complex relationship with the Ḥanbalīs is well known. Similarly, among Mālikīs, Ibn 'Abd al-Barr is remarkable for his textualist bent, a fact that makes him congenial to ISIS, belonging as they do to the highly textualist Wahhābī–*salafī* legal tradition.