



Osama bin Laden: Legitimate within Islamic Legal Thought?

By Rebecca Kinyon

The Arab world is rife with friction between secular reformists and Sharia-minded traditionalists. The significance of this struggle cannot be underestimated. A way of life is at stake, and the intensity of the conflict has sparked a revolution against the West. Osama bin Laden, Saudi billionaire and mastermind behind terrorist attacks, puts a face to this elusive, and increasingly violent, backlash being waged on U.S. soil.

There is a willful lack of motivation within the United States to understand the reasons behind the violence, as policymakers choose to condemn the means of aggression instead of understanding their roots. The reasons behind this reaction may parallel those regarding the spread of communism. One theory regarding why George Kennan's theory of containment was so heartily adopted by administrations throughout the Cold War, was that it did not require the United States to modify its own actions—simply to contain the actions of other nations. The same may be true of terrorist networks today. It is far more compelling—for reasons of maintaining status quo, clear conscience, and straightforward policy—to focus upon de-legitimizing bin Laden and his followers instead of examining their demands. However, whether legitimate or not, bin Laden is being granted authority within the Islamic world. No amount of rhetoric within the United States can undo that fact, and no amount of homeland security can dismantle a

paradigm in which a child is viewed as a legitimate target for a war against the United States. This article aims to understand the context within which Osama bin Laden is operating, concluding that our tactic of discrediting bin Laden's authority, instead of understanding from where it is derived and how it is sustained, will not halt its influence.

Authority

Authority can be legitimized in two ways within the Islamic tradition: through the 'ulama (the scholarly religious establishment), or through the sword. Osama bin Laden's authority is granted through the latter. The precedent for claiming authority by the sword is, ironically, found within the Quran. Although subjects under Islamic states are commanded to obey the ruler, or *imam*, this duty of obedience is null and void if rulers fail to uphold the word of Allah. Within the text it is written, "If any (rulers) do fail to judge by what Allah has revealed, they are (no better than) unbelievers."¹ Bin Laden's support rests on his claim that he is a self-declared *amir* (commander), who is willing to do what no other Arab leaders are doing. In the absence of true leadership, he is a de facto military commander, the only one willing to stand up against the western infidels and occupiers. In Islam, there is no obligation for the military leader to be a religious man as well, and bin Laden makes no claim on being one. Nonetheless, his quiet and assured demeanor,

with hand gripping a gun, inspires awe in his followers, which is only heightened by his ancestral line that extends to the holy cities of Mecca and Medina.²

Understanding Osama bin Laden's actions within the context of Islamic legal thought rests on two main issues. The first is a *de jure* question: whether or not his call for jihad is legitimate within Islamic texts, specifically the Quran and hadith. The second is a *de facto* issue, and in some ways independent of the answer to the first issue: whether influential leaders have condemned him, or whether they approve.

Jihad: Struggle in the name of Allah

"Prescribed to you is fighting, though it be hateful to you. Yet it may happen that you will hate a thing which is better for you; and it may happen that you will love a thing which is worse for you. God knows and you do not"³

The following three points regarding jihad must be examined in order to determine whether or not, within the Islamic tradition, bin Laden's call for jihad against the West can be legitimized.

First, the validity of the jihad, specifically, whether it is defensive or offensive in nature. The Verses of Fighting clearly state that when injustice has been committed against Muslims, they are permitted—even called—to fight. "Leave is given to those who are fought because they were wronged—surely God is able to help them—who were expelled from their habitations without right, except that they say "Our Lord is God."⁴ Moreover, the Quran adds, "Whosoever commits aggression against you, do you commit aggression against him like as he has committed against you; and fear you God, and know that God is with the godfearing."⁵ Thus, jihad is clearly legitimized as a defensive war. However, there are contradictory statements regarding

whether jihad can be an offensive war, for example as a tool of conversion. Although it is not explicitly described as such within the text, some scholars claim that in the quest to reach dar al-Ilsam (the ultimate Muslim realm in which all men are reunified under Islam), there is an implied order from God for Muslims to fight against unbelievers.⁶ However, there are scholars who claim jihad is strictly a defensive war by pointing to verses stating, "Let there be no compulsion in religion."⁷

This point may or may not be moot, however, as bin Laden claims his jihad is a defensive one. When asked how he justified the killing of innocent men in the light of Islamic teachings, he answered:

This is a major point in jurisprudence. In my view, if an enemy occupies a Muslim territory and uses common people as human shields, then it is permitted to attack that enemy...America and its allies are massacring us in Palestine, Chechnya, Kashmir and Iraq. The Muslims have the right to attack America in reprisal. The Islamic Shariat says Muslims should not live in the land of the infidel for long.⁸

The second point considers jihad's rules of engagement. Scholars agree that the obligation to fight in the jihad applies to healthy "adult free men who have the means at their disposal to go to war," and the rest of society can stay behind. Similarly, the rules of engagement state that all adult, able-bodied, unbelieving males may be killed, but it is forbidden to slay women and children, provided that they are not fighting. This is based on the fact that the Prophet prohibited the slaughter of women and children, when he said of a woman who had been slain, "She was not one who would have fought."⁹

Given these rules, one may claim that even if bin Laden's jihad truly is defensive and therefore legitimate in Islam, he has violated rules of engagement through the killing of innocent citizens. This point is critical. Western policymakers refuse to acknowledge his demands, and validate that policy through focusing upon the illegitimacy of his warfare. However, if there are interpretations of Islamic law that validate his methods, then U.S. policy is only a valiant effort to reaffirm our own values, sacrificing increased understanding and security.

Influential muftis have issued statements condemning the tactics used in 9-11, such as Sheik Yusuf Qaradawi of Egypt. His rulings and opinions are among the most respected, but also the most enigmatic. He is viewed as an extremist for his statements sanctioning the suicide bombings in Israel, but is a liberal in his belief that Israel and a Palestinian state can coexist, and in his fatwa sanctioning women as candidates in Bahrain's municipal elections. The complexity of his opinions draws critics, frustrated by their inability to characterize him; and draws large numbers of supporters as well, heartened by his independence from political agendas. As director of the Institute of Islamic Political Thought in London was quoted, "If Sheik Qaradawi gives a fatwa (religious ruling), that fatwa will be heeded tomorrow in hundreds of places around the world."¹⁰

Thus, when Qaradawi both legitimizes terrorism in Israel but condemns terrorism in the United States, the West must listen, for Qaradawi's sympathy to the United States rests upon a fine line of distinction between Israel citizens and U.S. citizens. Qaradawi writes, "Islam categorically forbids the striking of civilians or the killing of civilians or the killing of those who do not fight."¹¹ However, he claims that the entire society in Israel is military, that no one in it is a civilian, perhaps due to the fact that every citizen is required to serve military duty. Thus, he makes a fine distinction between the two

countries, as Israelis are all combatants but Americans can be civilians. Where U.S. policymakers must be on guard, however, is the fact that Qaradawi believes Israelis are expelling people from their land through state-sponsored terrorism, with the support of the world powers. Were Qaradawi begin to focus upon the complicity of the United States in Israel's policies, as bin Laden does, he may feel fully justified in placing Americans in the realm of combatants as well as Israelis, for supporting their government. bin Laden writes the following, to this effect:

The 11 September attacks were not targeted at women and children. The real targets were America's icons of military and economic power...The American people should remember that they pay taxes to their government, they elect their president, their government manufactures arms and gives them to Israel and Israel uses them to massacre Palestinians...I ask the American people to force their government to give up anti-Muslim policies. The American people had risen against their government's war in Vietnam. They must do the same today.¹²

Moreover, it is possible for an argument to be made that adopts the western military's phrase "collateral damage"—used to legally justify the tens of thousands of civilians that have been killed in "Operation Iraqi Freedom"—and apply it to the civilians killed in terrorist activities against U.S. embassies, the World Trade Center, the Pentagon, and hijacked airplanes. Militant Islamists, in taking on the United States' military dominance, cannot fight with the same weapons. In the 9-11 attacks, airplanes were makeshift missiles to attack the centers of power within the United States, and could be construed as necessarily carrying their collateral damage inside them in order to

attack their targets. Whether or not the targets were legitimate, given that they were not all military targets, is an argument to be answered in the question above of whether all civilians are complicit in their government's activities.

The third and final point to consider regarding jihad is the distinction between a collective obligation to fight (*fard kifaya*), and a personal, individual obligation (*fard 'ayn*). The moment at which it is transformed from a collective to personal obligation is at the discretion of the sovereign ruler, and will obligate every Muslim to fight. Qaradawi has already stated that jihad against Israel is *fard 'ayn*, through his belief that women can now participate in terrorism: "When jihad is *fard 'ayn*, such as when the enemy invades a country, it is demanded from women that they perform jihad along with men side by side."¹³ This underscores the point made above, that the line distinguishing rules of engagement between Israel and the United States is a fine one, and indeed potentially blurry. Were the United States' support of Israel, and other of its policies in the Middle East, to implicate it as an invading enemy, then the United States may become the objects of a defensive, *fard 'ayn* jihad.

If this were to pass, then the United States would truly find no solace in fatwas issued by muftis sympathetic to the West, because enough contemporary theorists envisage an Islamic state in which the head of a polity (*amir*)—even a self-appointed one such as bin Laden—need no longer draw authority from the 'ulama. The writings of Sayyid Abu'l-A'la Mawdudi of Pakistan, an influential early twentieth century Islamic journalist and activist, highlight this point. Mawdudi simultaneously supported and criticized the 'ulama in his country. He acknowledged the importance of the 'ulama, specifically in the formulation of Pakistan's constitution, but also found their desire to be

involved in statehood a burden on the formulation of an Islamic state. Mawdudi's ideology calls for a new community of righteous individuals to lead the society to an Islamic revolution. This state would grant decision-making power to the *amir*, or head of the polity, with no requirement to consult with the 'ulama, which he found to be so conservative as to have lost touch with the modern world.¹⁴ Thus, bin Laden may be granted more than enough authority for his jihad to be waged without restraint.

The Adversary

American policymakers have chosen to paint Osama bin Laden as a pathological opportunist who is playing upon the worst fears of the Islamic world. Influential journalists perpetuate this idea, such as New York Times columnist Thomas Friedman. In his May 5, 2004 column, Friedman condemned the Arab world for not knowing the difference "between victories that come from educating your population to innovate and 'victories' that come from a one-night stand by suicidal maniacs like 9/11."¹⁵ Indeed, our worst fear would be that Osama and his followers are not insane, but rather symbolic of the Islamic world; that they reflect deeply-held sentiments as opposed to stirring up latent ones. If this fear proves true, then it is not a few pathological opportunists that U.S. policy is aiming to kill, but a deeply compelling revolutionary idea, one that not only resonates within the social fabric of the Islamic world, but that is justified within its legal fabric.

The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of Al Nakhlah, its Advisory and Editorial Boards, or the Program on Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.

¹The Quran, V:47.

² This idea is taken from a conversation with Frank Vogel, professor of Islamic Legal Thought at Harvard Law School.

³ The Quran, 2:216.

⁴ Ibid, 73.

⁵ Ibid, 74.

⁶ "International Law," Oxford Encyclopedia of the Modern Islamic World (1995), 213.

⁷ The Koran, II:256.

⁸ "Muslims have the right to attack America," The Observer, November 11, 2001.

⁹ Rudolph Peters, Jihad in Classical and Modern Islam ,(1996), 33.

¹⁰ Anthony Shadid, "Maverick Cleric is a Hit on Arab TV," Washington Post, February 14, 2003, A01.

¹¹ "It Is Not Permitted to Use Civil Airplanes as Instruments of Terrorizing Others," October 12, 2001, <<http://www.qaradawi.net>>.

¹² "Muslims have the right to attack America," The Observer, November 11, 2001.

¹³ "Participation of Women in Martyrdom-Seeking Operations," April 6, 2002, <http://www.qaradawi.net> .

¹⁴ Ibid.

¹⁵ Thomas L. Friedman, "Cursed By Oil," New York Times, May 5, 2004.