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CHAPTER I: DEFINING SOME FUNDAMENTAL CONCEPTS

As is often the case with subjects that are emotionally charged or obscured through controversy, the meaningfulness of any analysis of Islamism and the usefulness of that analysis in commenting on counterterrorism strategies depends largely on the definitions employed. Much in the same way as the concepts of fascism and totalitarianism are used interchangeably, as I pointed out in the first part of this book, the terms 'political Islam' 'Islamism', 'islamo-fascism', 'Islamic totalitarianism', 'Islamists' and 'jihadists' are used in pretty much the same manner. It seems to be of equally great importance that we differentiate between the different spheres that accompany such designations. Firstly, because typologies such as fascism and totalitarianism have vastly different and often times opposing implications for the strengths and weaknesses of the movements involved.⁴⁶³ Understanding these strengths and weaknesses is vital to the formulation of counterterrorism strategies. Secondly, the designation 'political Islam' or 'Jihadist Islam' seems to imply that politics or jihad are phenomena alien to Islam itself, or at least unlikely, extreme additions to the curriculum of Islam. Oftentimes these definitions seem to be mainly invented by western spectators and fuelled by either a desire to offend or not to offend, or are the result of a haphazard distinction between various groups whose intellectual, religious and cultural lineage is far from easy to

⁴⁶³ See my previous publication on this subject and its interconnectedness with the Islamist phenomenon in David Surland, "Totalitarian and Radical Islamic Ideologies," in *Religion, Politics and Law*, ed. Reinhard Sonnensmidt Bart Labuschagne (Leiden: Brill, 2009).

understand and which often overlap.⁴⁶⁴ Contrary to this, both the famous criticaster of Islam Dr. Wafa Sultan⁴⁶⁵ and foremost Islamist ideologues such as Dr. Ayman al-Zawahiri⁴⁶⁶, Sayyid Qutb⁴⁶⁷ and Ayatollah Khomeini⁴⁶⁸ have stated that there is only one Islam, the terms moderate Islam, political Islam or Islamism are western inventions. This research will not answer the question about the nature of Islam and the position of Islamism in it, but it will attempt to show that groups such as Al-Qaeda see themselves as thoroughly rooted in Islamic theology, jurisprudence and Islamic historical processes. It is precisely this rootedness in theology and jurisprudence

⁴⁶⁴ This phenomenon is not without precedent. During the first two to three decades following the end of the Second World War, the wide held consensus was that the Soviet Union could not be Totalitarian since it was in essence anti-fascist and helped overthrow the Nazi's. This emotional consideration for a long time obscured the debate about the nature of Leninist-Stalinist systems thus allowing a host of fellow-traveller political groups to exist unobstructed in western democracies. Even more shameful is the fact that due to this illegitimate sensitivity, political groups could emerge which were partly funded by or engaged in fundraising for regimes such as Mao's Red Guard or Pol Pot's Khmer Rouge, something which would be inconceivable had it been done by National Socialist regimes. (see for instance the history of the Dutch Socialist Party or the Green Left Party in: Roelof Bouwman, "Van Bloedrood Tot Groenlinks," *HP de tijd* 2004.) Thus whilst fascism and National Socialism were uniformly and rightfully vilified, political systems with equally bloodstained track records were publically protected if not praised without condemnation. The obvious danger is that out of a sense of political correctness or political opportunism, the same phenomenon will apply to the study of Islamist thought and that thus early warning signals or an understanding of its potential for violence and sedition will be ignored. One such argument is the oft repeated but equally often unsubstantiated claim that violence, intolerance and discrimination are inimical to Islam. Likewise, the opposite has also been claimed and both phenomena do little to clarify the issue at hand namely: what is the nature of the ideas that lie at the roots of Islamist thought? Are they easily brushed aside by the mainstream of Muslims, or do they in fact exert considerable appeal on them?

⁴⁶⁵ Wafa Sultan, *A God Who Hates* (New York: St. Martin's press, 2009).

⁴⁶⁶ al-Zawahiri, "Exoneration."

⁴⁶⁷ Qutb, *Milestones*.

⁴⁶⁸ Khomeini, *Velayat-E Faqeeh, Governance of the Jurist*.

that exerts, or has the potential to exert a large amount of appeal on the Muslim community, the *ummah*. What this research aims to do is to look at the legal-political concepts that fuel these movements and come to a meaningful typology of the content of those concepts. In order to understand the conceptual vocabulary of Jihadist groups and Islamism in general it is pivotal we understand the Islamic framework out of which they originated. This chapter aims to clarify some of those concepts which are central to both Islam and Islamism.

1.1. The question of religion, religious law and religiosity

There is, as with every religion, a great divide between the religious-political-legal implications of the canonical texts, and the religious, if not spiritual experience of the everyday person, what I refer to as religiosity. When it comes to Islam I always call this the “Catholicization of Islam” by which I mean the following. As someone who has grown up in an almost exclusively Catholic part of the Netherlands and who has attended exclusively Catholic schools, I was always struck by the nature of the religious experience of the self-professed Catholics. As I saw it, a Catholic is someone who is in church during Christmas, a birth, a death and perhaps during a baptism, but for the rest has no or very limited knowledge of Catholic liturgy, bible exegesis or even the rudimentary principles of faith, and depends for his understanding of right and wrong on principles common to all cultures. His association with Catholicism as a creed is mainly symbolic and quite often, rather obscure to himself as well. When I began debates about Islam and Islamic law, *Shari’ah*, with my Muslims students I found the same pattern; a general and severe lack of knowledge, but unlike Catholics, a deep identification with Islam as the founding principle of their identity and the object of their loyalty.⁴⁶⁹ Perhaps this is due to their experience as a migrant, but research indicates this is a universal element in Muslims attitude

⁴⁶⁹ When compared to for instance their country.

towards religion.⁴⁷⁰ I have no doubt that many people who identify themselves as Muslim in reality have little appetite for living under Shari'ah rule if they knew what it truly entailed. To many it seems 'being a Muslim' has more to do with their family, their traditions and customs of their country of origin than with Islam as a belief system. From my own experience with people who call themselves 'religious', their religion is, as I stated, highly symbolic. God is the symbolic representation of 'the good' which they strive for in their own lives and environment. More often than not, the 'religious' person is the author of the 'religion' he or she proclaims to adhere to. This is frequently indicated by a lack of knowledge of fundamental scriptural sources, thus causing a hyperinflation of the denominator 'religious'. In short, the self-identification as being religious is more often than not a spiritual quality through which a 'religion' is invented by the religious person rather than an adherence to a body of canonical texts, laws and provisions. With regard to Islam and Muslims then, the question is whether or not these people are truly aware of the requirements posed on them and their societies by Shari'ah law. As the writer Sam Harris stated:

Religious moderation is the product of secular knowledge and scriptural ignorance.⁴⁷¹

The question which then follows is: what constitutes a Muslim? Is the Catholic who performs the minimal level of religious duties but goes about his daily business without bothering with religious dogma truly a Catholic? I would say no. More importantly, the Islamic writers, jurists and ideologues we will be discussing disagree as well.

1.1.1 Some consideration on the relationship between Islam and Shari'ah law

⁴⁷⁰ Esposito and Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think*, pp. 1-6.

⁴⁷¹ Harris, *The End of Faith: Religion, Terror, and the Future of Reason*, p. 21.

Oftentimes it is wrongly assumed that in the orthodox view of Islam Islamic law is a part of Islam but not the same as Islam; that one could even have an Islam without the Shari'ah.⁴⁷² This argument mostly takes the shape in the idea that the utterance of the *Shahada*, the testimony of faith and the inner acceptance of a few articles of faith are in themselves enough to make one a Muslim.⁴⁷³ I would however suggest, and this is in line with most Islamic scholars, that these articles of faith in and of themselves are rather void. They need to be commented, explained and expressed through a system of thought which is much akin to the legal exercise of giving commentary on laws through jurisprudence, *fiqh*, and case law. Islam in that respect is a highly juristic religion. The system of commentary, case law and jurisprudence that is derived from these simple articulations of faith, expressly or inter alia, is known as the Shari'ah which in the words of the eminent scholar Joseph Schacht is:

[..] the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself. [..] Theology has never been able to achieve a

⁴⁷² There have been Islamic sects which subscribe to the point of *antinomianism*, the position that religious law is dispensable for salvation. Their main argument is that man in the Garden of Eden were without laws and that the religious laws therefore were either manmade, or could be abrogated entirely, much in the same way as Christianity sought to abrogate Mosaic Law. Remnants of these views can be found in current day Ishmaili and Baha'i forms of Islam, both of which are perceived as heretical and apostates by orthodox Sunni and Shi'a Islam. Crone, *Medieval Islamic Political Thought*, pp. 315-331. Ibn al-Naqib al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, p. 607.

⁴⁷³ The *shadadah* reads: " *la ilaha illallah, Muhammad rasulu-lah*" There is no god but God, and Muhammad is the messenger of God. Additionally, there are six requirements of faith, *Aqidaa*, which a believer must follow in order to be recognized as a Muslim. "Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way." Ibn al-Naqib al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, pp. 808-810.

comparable importance in Islam [...]it is impossible to understand Islam without understanding Islamic law.⁴⁷⁴

Even those that aim at reforming Islam, such as Bassam Tibi, agree with Schacht's description of Islam. Tibi underscores Schacht's opinion and states that 'in Islamic law legal concepts are fused with religious meaning. Revealed Koranic truth is the standard; it is regarded in Islam as eternal and immutable; its jurisdiction is unlimited. The Islamic law derived from this truth claims to embrace all spheres of life and is therefore organic in character. [...] Here we encounter the unity of religion and law. [...] This explains why *fiqh* is central to Islam'.⁴⁷⁵ These statements by both Schacht and Tibi are of relevance to two main issues: As I will show, the Islamists movements do not claim to invent a new legal-political theory but rather declare to be the exponent of the traditional legal-political theory inherent in Shari'ah law and *fiqh*. I will return to the question of the validity of this claim in the chapter six. If we are to understand the Islamists' concepts and vocabulary, we must acquaint ourselves with the concepts and vocabulary of the Shari'ah and *fiqh*. In addition, if there is any legitimacy in their claim to adherence to the Shari'ah and *fiqh*

⁴⁷⁴ Schacht, *An Introduction to Islamic Law*, p. 1.

⁴⁷⁵ Tibi, *Islam between Culture and Politics*, pp. 154, 157. See for similar emphases on the importance of Shari'ah law and *fiqh* to Islam: Wael B. Hallaq, *The Formation of Islamic Law, The Formation of the Classical Islamic World* (Aldershot, Hants, Great Britain; Burlington, VT: Ashgate/Variorum, 2004), ———, *The Origins and Evolution of Islamic Law, Themes in Islamic Law* (Cambridge, UK; New York: Cambridge University Press, 2005), ———, *Sharia: Theory, Practice, Transformations* (Cambridge, UK; New York: Cambridge University Press, 2009), W. Montgomery Watt, *Islamic Political Thought*, Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam*, University of Cambridge Oriental Publications (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1986), Tibi, *Islam's Predicament with Modernity: Religious Reform and Cultural Change*, Sami Zubaida, *Law and Power in the Islamic World*, Library of Modern Middle East Studies (London; New York: I.B. Tauris, 2003), Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, third ed. (Cambridge: The Islamic texts society, 2008).

then the question of the *potential appeal* of the Islamist narrative on the Muslim masses becomes an important one.

It would be too easy to dismiss the Islamists claims of authenticity out of hand by saying, for instance, that Islamists *misuse* Islam for their own political purposes, or by claiming that their actions are contrary to Islamic law. Likewise, the claim that Shari'ah law is in no way connected to Islam and thus Islamist movements are also not connected to Islam is similarly too easy. The matter is unfortunately considerably more complex. I find it difficult to believe that Islam is, as is sometimes proposed, what a Muslim says it is. And it is for this reasons that terms such as 'jihadists', 'Islamists', 'political Islamists' or 'radical Muslims' are deceiving. For jihad, politics and the implementation of Islamic edicts and requirements in society are part and parcel of Shari'ah law and thus of Islam itself. When one studies the works of jurisprudence, *fiqh*, on which the Shari'ah is built, one can see that the Shari'ah incorporates all major fields of law: public, private, criminal, commercial, family law, the law of war and peace treaties, laws pertaining to rituals and religion and laws designed to constitute a political framework for the application of Shari'ah itself.⁴⁷⁶ It is 'an all-embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all its aspects'⁴⁷⁷

Rather than being an optional part of the religion of Islam, the Shari'ah is the core of Islam and its principles, norms, values and

⁴⁷⁶ See for instance the classical handbooks of Islamic law: Quduri and Siddiqui, *The Mukhtasar Al-Quduri: A Manual of Islamic Law According to the Hanafi School*, Burhan al-Din al-Farghani al-Marghinani, *Al-Hidayah: The Guidance, a Classical Manual of Hanafi Law*, Keller Nawawi, Noah Ha Mim, *Al-Maqasid: Imam Nawawi's Manual of Islam* (Evanston, IL: Sunna Books, 1994), Ibn al-Naqib al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, Malik ibn Anas, *Al-Muwatta of Imam Malik Ibn Anas*.

⁴⁷⁷ Schacht, *An Introduction to Islamic Law*, p. 1.

regulations have been laid down for all interested persons to read.⁴⁷⁸ The idea then that Islam is what a Muslim says it is, is therefore in my view, the view of Schacht, Hallaq and Tibi and more importantly, in the view of the Islamists we are about to analyze, simply not true. The degree to which a modern day Muslim can deviate from established legal tradition, adapt and interpret his own jurisprudence to the requirements of modern times or disregard Shari'ah law altogether is the subject of ongoing heated debate. Bassam Tibi for instance argues that *fiqh* is 'lawmaking by human beings' and 'definitely not revealed by God', and thus 'related to historical conditions that no longer pertain in modern times'.⁴⁷⁹ Many other authors of reputation concur with the observation that Shari'ah law only came to development more than a century after the death of Muhammad. In that sense Shari'ah law is derived from the canonical sources but its claims to divinity and sole authority *can* be contested.⁴⁸⁰ Together with other

⁴⁷⁸ It should be noted that there exist numerous differences between the varying schools of law, however, as long as a Muslim adheres to opinions that can be traced back to any of these schools of law, he is considered to not have transgressed the boundaries of Islam. An interesting book in that respect is 'Abd al-Rahman al-Jaziri, *Islamic Jurisprudence According to the Four Sunni Schools*, trans. Nancy Roberts, vol. 1 acts of Worship (Louisville: Fons Vitae, 2009). It details all the differing opinions of the four Sunni schools of law with regard to acts of worship and thus gives an interesting view on how the process of *usul al-fiqh* can lead to different opinions. In general when confronted with different legal opinions there are two possible choices; firstly the path of dispensation (*rukhsa*) in which case a Muslim may follow a school of law other than his own for reasons of necessity or when he believes the other school of law holds a stronger position, but not out of his own caprice, and secondly the path of greater precaution (*al-ahwat fi al-din*) in which case the Muslim can choose the strictest ruling out of godfearingness (*taqwa*). Ibn al-Naqib al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, pp. 37-39, 871. Article C6, sub 4-5, article W14

⁴⁷⁹ Tibi, *Islam's Predicament with Modernity: Religious Reform and Cultural Change*, p. 118., ———, *Islam between Culture and Politics*, p. 115.

⁴⁸⁰ See for studies into the origins of Shari'ah law: W. Montgomery Watt, *Islamic Political Thought.*, Kamali, *Principles of Islamic Jurisprudence*, Hallaq, *The Formation of Islamic Law*, ———, *The Origins and Evolution of Islamic*

reformers such as Abdullahi Na'im, Muhammad Taha, and Abdolkarim Soroush to name a few, Tibi argues for a revision and reconsideration of Shari'ah law and fiqh based on non-literal readings and rational or historical interpretations of the canonical sources.⁴⁸¹ They thus argue that Islamic law can be adapted to the needs of modern times without transgressing the boundaries of Islam. Furthermore, they argue that Shari'ah law is above all an ethical system aimed the individual rather than an exclusivist foundation for a legal-political order. But this position is currently not a mainstream position and is certainly rejected by the Islamists and a large part of the orthodoxy.⁴⁸² The 'reformist view that Islam is a religion and not a political legitimacy is now strongly rejected. The new call for *al-nizam al-islami*, for the political order of Islam is the hallmark of the present time'.⁴⁸³ Whilst the difference between the rationalist and literalist approach of Islam and Shari'ah law is not a main theme of this research, it does play a role in the background and can help us understand the position of the Islamists we are about to discuss. I will come back to the differences between the rationalists or *mutazaliyaah* and the Islamists further on in this chapter. For now, it is important to note that the Islamists conception of Islam and Shari'ah is not and has not gone uncontested. Tibi summarizes the rationalist' approach as follows:

Law, Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Us-Ul Al-Fiqh* (Cambridge; New York: Cambridge University Press, 1997), Hallaq, *Sharia: Theory, Practice, Transformations, Zubaida, Law and Power in the Islamic World*.

⁴⁸¹ An-Naim, *Islam and the Secular State*, Taha, *The Second Message of Islam*, Soroush, Sadri, and Sadri, *Reason, Freedom, and Democracy in Islam: Essential Writings of Abdolkarim Soroush*. See in addition: Sami Zubaida, *Beyond Islam: A New Understanding of the Middle East* (London; New York: I.B. Tauris; Palgrave Macmillan, 2010), Zaman, *The Ulama in Contemporary Islam: Custodians of Change*.

⁴⁸² See for an overview of the developments in Shari'ah reasoning in contemporary Islam: Zaman, *The Ulama in Contemporary Islam: Custodians of Change*.

⁴⁸³ Tibi, *Islam between Culture and Politics*, p. 120.

Der Islam der islamischen Rationalisten ist offen für das Fremde, die Shari'a nicht. Diese ist exklusiv und absolutistisch, trennt also die Welt des Islam vom »Rest der Welt«. Die traditionelle Shari'a ist als *lex divina* nur ein vormodernes Recht

The absolute divide between right and wrong which the Islamists propose, however, is according to Tibi an invention of tradition, an extremely selective view of the past:⁴⁸⁴

Diese Gut/Böse-Dichotomie im Islam verleugnet alle großen islamischen Geister besserer Zeiten von al-Farabi bis Ibn Ruschd und Ibn Khaldun, also alle islamischen Rationalisten.⁴⁸⁵

He then concludes that the Islamists understanding of Islam, and their politicization and sacralisation of the Shari'ah is in fact one of the hallmarks of totalitarianism:

Die politisierte Shari'a der Islamisten ist eine der Grundlagen des neuen Totalitarismus.⁴⁸⁶

Contrary to the reformers' views on Shari'ah law, stand the Islamist ideologues who will argue that Shari'ah and fiqh are part and parcel of divine revelation, are perpetual and immutable and form boundaries beyond which lies apostasy. Thus what lies at the heart of the debate between reformers and Islamists is not only the content of Shari'ah law, but also its divine authority and the question of whether or not Shari'ah law is a private ethical code or the legal-political theory of an Islamic order of being.⁴⁸⁷ This research will not answer, or even

⁴⁸⁴ Ibid., p. 126.

⁴⁸⁵ ———, *Der Neue Totalitarismus: "Heiliger Krieg" Und Westliche Sicherheit*, p. 26.

⁴⁸⁶ Ibid., p. 108.

⁴⁸⁷ Having said that, it should be noted that Shari'ah law is by no means a monolithic entity; there are various ways of interpretation and Shari'ah literature is rife with debates about the correct use and interpretation of certain canonical sources. The amount of bandwidth for interpretation depends on the subject matter at hand, the specific school of law, madhab,

endeavors to answer these questions. That would require an investigation of the validity of the Islamists claims in light of the larger scope of Islamic legal theological and political philosophy. This research is primarily concerned with the possible applicability of the totalitarianism paradigm to Islamist thought and thus has a very different objective. Having said that; this research cannot ignore the close relationship between Islam, Shari'ah law and fiqh on the one hand and Islamism on the other. Furthermore, as we will see, the core of the Islamists cause revolves around the concept of jihad. The influence of the rationalist' argument on the concept of jihad has been rather small. If one reads the books on scholarly disagreement, *ikhtilaf*, and on issues of jurisprudence, *fiqh*, one will not find major disagreements when it comes to the issue of jihad.⁴⁸⁸

Whilst I agree with Tibi, Hallaq and Schacht that Shari'ah law is manmade and only came about well after the death of the prophet

one follows and the instruments of interpretation one prefers. Here it is quite remarkable to note that compared to other matters of law, the subject of jihad is met with a great deal of consensus amongst the classical and medieval Islamic jurists. Why is this important? First of all, it is through the concept of jihad that Islamists aim to transform the world into an Islamic order of being. Secondly, if one wishes to contest their ideas then one should take note of this consensus. To make an analogy; if one looks at the constitution of say the United States, one would find that its laws have been steeped in tradition, are accompanied by centuries of more or less uniform jurisprudence and legal practice. To make a radically new interpretation of its laws is always possible; jurisprudence is after all a human endeavour. The legitimacy and authority of such a new interpretations, however, will be challenged by the established tradition and practice and thus have to overcome formidable obstacles if they want to become the new standard of interpretation; the ongoing debate about the right to bear arms being a point in case. If this is true for manmade laws, it is all the more true for divine law, and this is exactly the point brought forth by the Islamist jurists.

⁴⁸⁸ Muhammad ibn Abd al-Wahhab, *Kitab at-Tauhid*, trans. compilation and research department dar-us-salam (Riyadh: Darussalam, 1996). Ibn Khaldun agrees with the commonly held position that the essence of jihad is to 'convert everybody by persuasion or by force'. Quoted from Bostom, ed., *The Legacy of Jihad*, p. 161.

Muhammad, it is also true that the ideal-type world of Shari'ah law and its presumed connectedness with Islam itself has long been practically uncontested. If anything, Shari'ah law has historically not been implemented *not* on account of any perceived remoteness from Islam but rather due to the fact that worldly leaders weren't too keen on the consequences it would entail for their position or for other practical considerations.⁴⁸⁹ In that sense the realm of political and worldly affairs, and the realm of Shari'ah law have often been separated or marred by tense relations. In the coming chapters I will show how the Islamist discourse was fuelled first and foremost by a desire to implement the Shari'ah in all facets of life and not, as is often perceived, as a reaction to non-Islamic societies' interference in Islamic societies' affairs. The aim was to end the competition between the worldly interests of the rulers and the theological interests of the Islamic jurists for influence over the affairs of the masses in favour of the jurists. In that sense Tibi's description of Islamization as 'politicization or shariaization of Islam' seems correct.⁴⁹⁰ This of course leaves open the question whether or not Islam itself is not already political in nature. The Islamists have some strong arguments to back this claim up, but in the same breath it must be said that these arguments are all ideal-type arguments. The fact that the Islamists rely to such a great extent on ideal type arguments to which they apply a rather ruthless logical deduction which results in their

⁴⁸⁹ W. Montgomery Watt, *Islamic Political Thought*, pp. 29, 73-76, Crone and Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam*, p. 109, Zubaida, *Law and Power in the Islamic World*, p. 78, Hallaq, *The Origins and Evolution of Islamic Law*, p. 187. I should however also point out that certain Islamic scholars and intellectuals of great repute have indeed opposed all too literal or dogmatic interpretations of Shari'ah or the canonical sources. While this is definitely true, it should also be noted that the influence of these figures on the development of Shari'ah law, and in particular on the concept of jihad which is so pivotal to *this* research, has not been very great.

⁴⁹⁰ Tibi, *The Challenge of Fundamentalism: Political Islam and the New World Disorder*, p. 118. ———, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam Versus Global Jihad*, p. 110.

principles of action, is one strong indicator of the potential totalitarian character of their respective ideologies.

This research limits itself to those aspects of Shari'ah law that have clear political-legal connotations and which deal with ordering society alongside the perceived will of Allah. With regard to that specific body of laws, the Shari'ah has for a large part of its history constituted a realm of its own, an ideal-type realm, with debatable influence over the daily life of Muslims. Yet, it cannot be denied that within the realm of the jurists reflections upon what Shari'ah ought to be, certain interpretations of the canonical sources have been part of the consensus for a long time and thus constitute a legal-political theory which can rely on a great deal of traditional authority. Tibi argues that the Islamists narrative which seeks to make the Shari'ah the sole source from which all sovereignty and authority spring, both on the ethical individual level, and on the level of the laws of the state, is an 'invention of tradition' rather than an appeal to tradition.⁴⁹¹ He points out that in his view Islamists are more *homo politicus* than *homo religious*.⁴⁹² Whilst this may be true when it concerns the disparity between the Islamist wish to fully submit society to the edicts of Shari'ah law and the *actual* historical application of the laws of Shari'ah in Islamic societies, it does not apply to the strictly theoretical domain of Shari'ah law. The Islamists do not seek to invent a modern interpretation, but rather, seek to implement the orthodox interpretation on a global scale. In that sense, the Islamists' paligenetic appeal to a golden age in which Shari'ah law was applied is anachronistic. The Islamists may seek to revive a tradition that never actually existed, but their appeal to the content of Shari'ah law is for the most part very much an appeal to orthodox consensus. Modern day reformers may disagree on the content of the Shari'ah but they cannot, and for the most part do not, claim that it has no or little connection with Islam. Although this the

⁴⁹¹ Tibi, *Islam between Culture and Politics*, p. 126.

⁴⁹² *Ibid.*, p. 135.

methodology of this research is not aimed at answering the questions of the validity of Islamist legal-political theory in the grander scope of Islamic legal-political theory, it cannot ignore the fact that both the reformers and Islamists appeal to the same canonical sources of Islam. Tibi in that sense rightfully states that:

Obwohl aus den bisherigen Ausführungen hervorgeht, dass der djihadistische Islamismus aus meiner Perspektive eine Fehlinterpretation des Islam ist, liegt doch in beiden Fällen (meinem liberalen Islam und dem totalitären Islamismus) eine Position vor, die den Islam als Grundlage für sich in Anspruch nimmt. Anders formuliert: Beide berufen sich auf den Islam.⁴⁹³

The Islamists I will be discussing all claim to cling to the consensus amongst the jurists and pride themselves on their adherence to classical interpretations of the canonical sources. The Islamists principle of action is to bridge the gap between the theoretical realm of Shari'ah law and its actual application. They do not claim to create new laws or novel interpretations, but on the contrary, they claim to *purge* Islam of all foreign un-Islamic elements that have been incorporated into it over the last 1400 years, including the constraints put on it by worldly rulers. If one is to confront the Islamists narrative, one has to be aware of their appeal to the consensus amongst the jurists, their appeal to canonical sources and most importantly their claim that the Shari'ah is not merely a guiding post for individual ethics but a clear cut all containing framework for the organization of the entire *order of being*. This is not to say that the Islamists are in the right. It does mean that if their claims of an appeal to those sources and consensus appear valid, then the appeal they might have on not so well informed Muslims is not to be underestimated.

As I will show in the coming chapters, Islamic ideologues see themselves as being bound by Islamic law to the highest possible

⁴⁹³ ———, *Der Neue Totalitarismus: "Heiliger Krieg" Und Westliche Sicherheit*, p. 6.

degree. Instead of acting on their own behalf, these movements see themselves as acting on divine edicts which they cannot ignore. Self and world salvation depends on their adherence to these edicts. Whether or not their positions have any validity in terms of the larger scope of Islam and Islamic law is for the aims of this research quite irrelevant. This may seem odd but it is important to emphasize that this research seeks to answer the question whether or not these ideologues and movements are totalitarian. Do they feature the dual sword of ideology and terror? Do the ideologues betray a 'logicality of ideological thinking' which aims at an, if need be, forceful fabrication of a new order of being? This research does not aim to investigate whether or not the Islamists claims are valid in the light of the larger body of Islam. However, in some cases, the arguments brought forward by Islamists do trace back to legal and theological principles which are common in Islam. Whilst it is not my intention to test the validity of the Islamist claims, it can happen that this validity is apparent, and it will then be named as such. As I will show, it is especially in the works of Ayman al-Zawahiri that we see a rigorous effort to legitimize the actions of Al-Qaeda through an appeal to the Shari'ah, fiqh and the canonical sources of Islam. I therefore cannot ignore the fact that the Islamist legal-political vocabulary is intricately connected with that of Islam in general. In addition, as Zawahiri brings to the fore in his defense, there seems to be quite a degree of consensus amongst the classical and medieval jurists of Islam regarding the various aspects of Jihad, the concept upon which Islamists movements are founded. Al-Qaeda thus does not claim to invent anything new. Its main arguments, and this holds true for most Islamists, is that the *ideal type* realm of Islamic law has been precisely that for the larger part of Islamic societies' history, an ideal. What these movements aim to do is to materialize this ideal into the real world, to subjugate the realm of worldly affairs to the realm of Shari'ah law.

The methodology of this research thus focuses on those aspects of Shari'ah and fiqh which are used by the Islamists in order to legitimize

their existence and their actions. Since both Schacht and Tibi, amongst others, do not challenge that the Shari'ah is the 'core and kernel of Islam itself', I will assume that this is true. Moreover, when one reads Islamic legal-political literature from the classical and medieval to the modern period, one will be hard-pressed to see any theory on legal or political matters that is separated from Shari'ah reasoning, thus only reinforcing the centrality of the Shari'ah. Whether this centrality is *just* in view of the message of Islam is a question for Muslims to answer and thus *not* part of this research. Now that we have a basic understanding of the role that Shari'ah and fiqh play in the larger framework of Islam, the next question is to the role of Muslims in this research.

1.1.2 What about Muslims and Islamism?

To be short, this role is negligible. This research concerns itself primarily with the potential totalitarian nature of Islamists movements. It is concerned first and foremost with the logicity of ideological thinking within these movements. Whilst the message of the Islamists movements certainly has an appeal on the Muslim masses it is not the task of this research to chart the popularity of those ideas and the reasons underlying their appeal. At best, this research can say something about the potential appeal of Islamist ideas on Muslims when this has consequences for counter-terrorist policies. In so far as quantitative research has been done in this area it is of a rather vague nature.⁴⁹⁴ Some research has been done which is concerned with the support Muslims in a given country give to certain terrorist acts, or detail whether or not these Muslims want to

⁴⁹⁴ The Dutch professor of jurisprudence Paul Cliteur (b. 1955) rightfully states that 'most discussions on what Muslims think are highly speculative or vague'. It is true that quantitative research in this field is highly lacking. In so far as it does exist it is mostly of a highly local nature, focussing on a Muslim population in a given country, or so large that it fails to explain the dynamics that are in play when debating the appeal of the Islamists message. Paul Cliteur, "Cultural Counterterrorism," in *Terrorism: Ideology, Law, Policy*, ed. Geliijn Molier, Afshin Ellian, and David Suurland (Dordrecht: Republic of Letters, 2011), p. 359.

implement Shari'ah law in their country.⁴⁹⁵ While this is of interest, it tells us very little about the reasons why a given Muslims answers such questions with a yes or no. The research does not indicate whether or not Muslims actually *know* what Shari'ah law entails. When repeating this question to my own Muslim students it becomes very clear that practically none have any idea what Shari'ah law actually entails. Furthermore, the support given to terrorist acts might just as well be related to feelings of western interference in Arab affairs, and may not have anything to do with Islam or Shari'ah law. The largest quantitative research done to date has been John Esposito and Dalia Mogahed's, *Who speaks for Islam? What do a billion Muslims really think?* Esposito and Mogahed write that 'in totality, we surveyed a sample representing more than 90% of the world's 1.3 billion Muslims, making this the largest, most comprehensive study of contemporary Muslims ever done.'⁴⁹⁶ The results of the worldwide poll presented in this book are interspersed with commentary by Esposito which leaves much to be desired. In the words of Esposito, a moderate is someone who believes that 'the 9/11 attacks were not justified'. Esposito thus arrives at a figure of 93% of Muslims worldwide which are deemed moderate.⁴⁹⁷ This figure based upon

⁴⁹⁵ See for instance PEW Global Attitudes Project, "Muslim Publics Divided on Hamas and Hezbollah," (2010). "Al Qaeda also received largely negative ratings among Muslim publics in the 2011 survey. Only 2% of Muslims in Lebanon and 5% in Turkey expressed favorable views of al Qaeda. In Jordan, 15% had a positive opinion of al Qaeda, while about one-in-five in Indonesia (22%) and Egypt (21%) shared this view. Palestinian Muslims offered somewhat more positive opinions (28% favorable), but about two-thirds (68%) viewed bin Laden's organization unfavorably".

⁴⁹⁶ Esposito and Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think*, p. xi.

⁴⁹⁷ This question in itself is odd seeing that a majority of Muslims do not think the attacks of 9/11 were carried out by Muslims: "The least skeptical Muslim nation is Jordan; even there, a majority (53%) says they do not believe Arabs carried out the attacks. The most skeptical nation is Indonesia, where 65% say they do not believe it and just 16% say they do, with the remaining 20% expressing no opinion." PEW Global Attitudes Project, "The Great Divide: How Westerners and Muslims View Each Other," (2006).

Esposito's definition is highly misleading for two reasons and these reasons underlie why I will not go into this debate about Muslims and Islamism in this research. The first reason is related to the problem of defining a moderate. According to polls done by the PEW global attitudes project in 2010:

About eight-in-ten Muslims in Egypt and Pakistan (82% each) endorse the stoning of people who commit adultery; 70% of Muslims in Jordan and 56% of Nigerian Muslims share this view. Muslims in Pakistan and Egypt are also the most supportive of whippings and cutting off of hands for crimes like theft and robbery; 82% in Pakistan and 77% in Egypt favor making this type of punishment the law in their countries, as do 65% of Muslims in Nigeria and 58% in Jordan. When asked about the death penalty for those who leave the Muslim religion, at least three-quarters of Muslims in Jordan (86%), Egypt (84%) and Pakistan (76%) say they would favor making it the law [..]⁴⁹⁸

Unless one has no objection to deeming these positions as moderate, these percentages seem to undermine the 93% percentile given by Esposito. In addition, the concept of a moderate, as used by Esposito in his other works, revolves around the idea of advancing a 'reformist interpretation of Islam and its relationship to democracy, pluralism and human rights'. As such, Esposito expressly named Yusuf al-Qaradawi, the spiritual head of the Egyptian Muslim Brotherhood, a moderate.⁴⁹⁹ Al-Qaradawi has declared in a fatwa that suicide bombing against Israeli citizens, including the killing of Israeli pregnant women and their unborn babies, is lawful on the grounds that the babies could grow up to join the Israeli Army.⁵⁰⁰ Qaradawi

⁴⁹⁸ ———, "Muslim Publics Divided on Hamas and Hezbollah."

⁴⁹⁹ John Esposito, "Practice and Theory: A Response to "Islam and the Challenge of Democracy" " *Boston Review*, no. April-May (2003).

⁵⁰⁰ Bettina Gräf and Jakob Skovgaard-Petersen, *Global Mufti: The Phenomenon of Yusuf Al-Qaradawi* (New York: Columbia University Press,

has also praised Hitler for killing the Jews and has expressed his hope of dying while fighting a jihad against the Jews.⁵⁰¹ Seeing that the largest quantitative research to date is thus marred by what appears to be an ideological narrative, I cannot in good conscience incorporate it in my research.⁵⁰²

My first objection therefore is that these types of polls do not tell us very much about the mindset of the persons being interviewed. My second objection is of a more technical nature. As I aim to show in the next chapters, Islamist Muslims too might argue that these attacks were not justified. A myriad of reasons can be given to contest the legitimacy of the 9/11 attacks on grounds that would in no way warrant the label of moderation. Just to give a few examples: Those who performed the attack came into the country under the protection of a visa. The visa is equal to a pledge of safety, *aman*, and breaking this pledge without declaring war is in most circumstances a breach of Shari'ah law. The attackers killed themselves in the process whilst Shari'ah law is in principle opposed to suicide. The attackers killed other Muslims which, again in principle, is outlawed by Shari'ah law. Under certain interpretations of the Shari'ah law all of these arguments would necessitate a condemnation of the 9/11 attacks without ever denying that the attacks themselves were lofty goals to be pursued then or in the future. The research of Esposito tells us nothing about the knowledge of those interviewed of Shari'ah law,

2009). P. 7-8 Arab News, "Stop Terror Sheikhs, Muslim Academics Demand," *Arab News*, 24 October 2004.

⁵⁰¹ IPT News, "Moderate" Qaradawi Defends Hitler and Nuclear Terror," no. 11-9-2010 (2010), <http://www.investigativeproject.org/2315/moderate-qaradawi-defends-hitler-and-nuclear>. See also the YouTube video: http://www.youtube.com/watch?v=VcB_DZ4YQYQ

⁵⁰² Paul Cliteur enters into a more detailed deconstruction of Esposito's research and states: "[...] the research of Esposito and Mogahed is vitiated by the sometimes arbitrary and ideology-laden *interpretations* that they give of the figures they present. They more than once engage in conclusions on the basis of the figures they represent that are far from convincing and manifesting views that no critical scholar can and should embrace. Cliteur, "Cultural Counterterrorism," p. 478.

yet, the people interviewed *are* described as Muslims. As I have asked above: Is the Catholic who performs the minimal level of religious duties but goes about his daily business without bothering with religious dogma truly a Catholic? I would say no. More importantly, the Islamic writers, jurists and ideologues we will be discussing disagree as well. The core of the Islamist narrative is that Muslims have strayed from the path of Shari'ah law. As I will show in the coming chapters, Islamists themselves do *not* intend to turn non-Muslims into Muslims, but Muslims into Islamist-Muslims. That is, into Muslims that are fully aware of the implications and demands placed on them by Shari'ah law and who choose to live by them. In other words, the research done so far has yielded little results in specifically measuring the appeal of the Islamists narrative on the Muslim masses. I therefore do not involve the role of Muslims in my research and instead focus primarily on the logic and modus operandi of Islamists movements and their relation to totalitarianism. Only in so far as it is needed in order to understand their logic and modus operandi, will I delve into the larger matter of Islam and Shari'ah law.

I have thus made a brief overview of some of the principles which will guide my research into this sensitive matter. I reiterate that this research is not about Muslims, nor is it, on the whole, about the nature of Islam. This research is concerned with the question of the possible applicability of the totalitarianism paradigm to Islamists movements. In order to ascertain whether or not Islamism constitutes a novel form of totalitarianism we need to come to grips with their particular legal-political vocabulary and this necessitates that we acquaint ourselves with Shari'ah law, fiqh, and to some degree the canonical sources since these function as the foundations of the Islamists discourse. Before I proceed with my summary of some basic concepts of the Islamic vocabulary I should reiterate my definition of Islamism as I have given it in the introduction.

1.2 What is Islamism?

As with totalitarianism, Islamism too is described in a myriad of ways by authors from various academic disciplines.⁵⁰³ I have summarized some of the most oft heard definitions here. Olivier Roy, as most other authors I will mention here, defines Islamism as a desire towards the 'unification of the religious and the political'. Islamism claims to 're-create a true Islamic society, not simply by imposing *Shari'ah*, but by establishing first an Islamic state through political action. Islamists see Islam not as a mere religion, but as a political ideology that should replace all aspects of society'.⁵⁰⁴ Peter Mandeville in his analyses of the different Islamist movements describes Islamism as 'forms of political theory and practice that have as their goal the establishment of an Islamic political order in the sense of a state whose principles, institutions, and legal system derive directly from the *Shari'ah*. In the eyes of those who advocate Islamist solutions, religion is generally viewed as a holistic, totalizing system whose prescriptions permeate every aspect of daily life.'⁵⁰⁵ The former Oxford professor Hamid Enayat in his analysis of modern Islamic political thought describes it as 'The total integration of the religious and political under the aegis of the *Shari'ah*'.⁵⁰⁶ Afshin Ellian, in his political and legal philosophical analysis of the political Islamic phenomenon elaborates on this unification of the religious and political as follows: "Political Islam brought the transcendent, religious, and metaphysic principles to earth, in this immanent world. All became one. Conflict was legitimized with a call to previously transcendental concepts. Struggles even took place to give the transcendental world a place in this immanent world. The oneness was complete. [...]all aspects of the culture – education, science, and even literature – were to be considered and viewed from the position

⁵⁰³ See for instance the analyses of Mozaffari, "What Is Islamism? History and Definition of a Concept.", Sheppard., "Islam and Ideology: Towards a Typology."

⁵⁰⁴ Roy, *The Failure of Political Islam*, pp. 2, 8.

⁵⁰⁵ Mandaville, *Global Political Islam*, p. 57.

⁵⁰⁶ Enayat, *Modern Islamic Political Thought*, p. 89.

of Islam".⁵⁰⁷ Gilles Kepel reiterates the Islamist's desire to establish an Islamic state on the basis of the Shari'ah and emphasizes in addition that this desire stems in part from a reaction against modernity and the ensuing secular nationalist movements, whilst at the same time being opposed to the traditional Islamic position which relegated the actual implementation of the Shari'ah through political combat to 'a secondary concern'.⁵⁰⁸ The idea of an 'invention of tradition' is also expressed by Bassam Tibi, to whom I will return shortly. This position is at odds with Bernard Lewis's essay of 1954 in which he commented on the 'authoritarianism, perhaps we may even say the totalitarianism, of the Islamic political tradition'.⁵⁰⁹ Whilst Lewis contends that the political tradition of Islam itself might be considered totalitarian, and Kepel argues that it is rather opposed to this tradition, Roy maintains that totalitarianism on the whole is 'impossible due to Islamic societies respect for the family and lack of interest in the social sphere'.⁵¹⁰ A different approach is chosen by Tarek Fatah who, like Bassam Tibi, is a Muslim highly critical of the Islamist phenomenon. Fatah offers an explanation of Islamism which is akin to Hoffer's depiction of the mindset of the non-religious 'true believer' and which emphasizes the negative attitudes of Islamism; the 'urge to eradicate, crush and purge lies at the heart of their obsession'. "For these people who treat Islam as a brand name, not a religion, it seems their motivation is one of revenge, or an outburst on seeing themselves as unable to compete in or contribute to a globalized world. [...] They would like to see both Muslim and non-Muslim collectively submit to their fascist ideology of hate and supremacy where instead of life, death is to be celebrated."⁵¹¹ Quite apart from most authors on this subject, Fatah does assume that

⁵⁰⁷ Ellian, "The Legal Order of Political Religion: A Comparative Study of Political Islam and Political Christendom," pp. 162, 169.

⁵⁰⁸ Kepel, *Jihad: The Trail of Political Islam*, p. 23.

⁵⁰⁹ Lewis, "Communism and Islam."

⁵¹⁰ Roy, *The Failure of Political Islam*, pp. 10, 197.

⁵¹¹ Fatah, *Chasing a Mirage: The Tragic Illusion of an Islamic State*, pp. 8, 271-272.

Islamist movements abuse Islam as a 'political tool to further their goals.'⁵¹² This position is reiterated by Tibi, who states that whilst in the worldview of the Islamic fundamentalist his actions are derived from Islam, he is in fact 'a political man with a political outlook'. This is closely related to Tibi's understanding of Islam as being a non-political, ethical order and is opposed by the Islamist enterprise of 'politicizing Islam and Shari'ah law.'⁵¹³ This attempt at the politicization of Islam, according to Tibi, has no foundation in the canonical sources or 'the authoritative scriptures of the ulama' (the legal scholars of Islam D.S.), and thus the Islamist project is not a matter of re-Islamizing the Muslim masses, but of an 'invention of tradition'. The re-Islamization thesis is thus, according to Tibi, 'wrong and definitely not an adequate formula for depicting political Islam'. "The packaging and language are traditional but the substance is new, and this is precisely what makes this return of tradition not merely a revival, but a reinvention."⁵¹⁴ This is underscored by the lack of references in the Islamists literature 'about restoring the traditional Islamic caliphate'.⁵¹⁵ The true meaning of the term 're-Islamization' should therefore not be the restoration of traditional Islam, which has 'forfeited none of its influence as a cultural-normative orientation determining the worldview of its believers', but the reshaping of the Muslim masses into the image of the Islamists' politicized and to a degree, 'highly selective views' on Islam.⁵¹⁶

⁵¹² Ibid., p. xvii.

⁵¹³ Tibi, *Islam between Culture and Politics*, pp. 118, 120.

⁵¹⁴ ———, *Political Islam, World Politics and Europe: Democratic Peace and Euro-Islam Versus Global Jihad*, p. 4.

⁵¹⁵ ———, *Islam between Culture and Politics*.p. 127

⁵¹⁶ "I am not concerned here with a 're-Islamization' of the Muslim countries, but rather with the interplay between the cultural, that is, religious and social, constraints of change. [...] It is wrong and definitely not an adequate formula for depicting political Islam. The term 're-Islamization' presupposed- from the semantic point of view- that Islam was once suppressed and that a return to it is now taking place. Those familiar with the Islamic civilization will know that Islam as a system of belief has never lost significance for its

Als »gläubig« in einer vom Geist des Islamismus durchdrungenen Welt des Islam wird heutzutage nur noch derjenige eingestuft, der den Islam schriftgläubig interpretiert und an der konstruierten Einheit von Staat und Religion sowie an der *Schari'a* festhält, ohne sie zu hinterfragen. »Ungläubig« soll dagegen jeder Muslim sein, der seine Religion entpolitisiert und sie als Ethik versteht sowie bei dem Erlangen von Wissen vom Primat der Vernunft – nicht der Offenbarung – ausgeht.

The problem, Tibi argues, is not the ethical normative system of Islam, but the politicization of Islam and of Islamic law.⁵¹⁷ Nonetheless, it can be said that the Islamist project of re-Islamization is not a re-Islamization of Muslims into the Muslims of earlier periods, whoever they might have been, but rather a fabrication of Muslims into 'new Muslims' created in the image of the Islamist movement. Unlike Tibi, however, I do not think that Islamists are 'political men with a political outlook'. As a methodological standpoint, I take them at face value when they say they are not. Especially when it concerns the circles around al-Qaeda, I believe that their detailed studies of Islam's canonical literature, their analyses and internal debate about the contents of Shari'ah law and fiqh and their extraordinary disdain and trepidation for any type of un-Islamic innovation indicates that they are acting on what they perceive to binding religious obligation they

adherents. However a process of political supersedence of Islam did take place following the decline of Islamic modernism. [...] In the course of this process, Islam, as a political legitimacy of political rule, has had to quit the field in favour of secular ideologies, such as nationalism and socialism. But Islam nevertheless forfeited none of its influence as a cultural normative orientation determining the worldview of its believers and affecting the related meaning for their life, as well as their actions in daily life. The notion of the current re-emergence of Islam is confined to the field of political ideology and therefore cannot be properly referred to as a re-Islamization. It is rather a process of political revitalisation, or a *re-politicisation of the sacred*." Ibid., pp. 118, 126.

⁵¹⁷ ———, *Der Neue Totalitarismus: "Heiliger Krieg" Und Westliche Sicherheit*, p. 26.

cannot refuse. I find it difficult to believe that they are anything but ‘true believers’. Rather, it seems that their political outlook is a *result of*, but not a *prima cause* of how they interpret the religious sources. At best I can doubt whether their belief has any legitimacy in the larger light of Islam, that would require a very different research, but this does not change the fact that I see them above all as deeply religious men on a religious mission for world salvation. This, however, is a side note that will not be answered by this research. More on topic; I do subscribe to Tibi’s view that the Islamist project is not about re-Islamization but rather about the invention of tradition. Re-Islamization in the Islamists sense does not mean turning non-Muslims or renegade Muslims back into traditional Muslims; it means the fabrication of traditional Muslims into an altogether different type of Muslim, the *Islamist* Muslim. The goal of the Islamists is the restoration of what the Islamists perceive as the first and most perfect Islamic polity, the unblemished model of Muhammad’s Medina.⁵¹⁸ It was only in Medina, the Islamists argue, that Islam was pure, unsullied by external influences or internal compromise between worldly and divine affairs, and in which the entire order of being was Islamic. The Islamists view of this model is best described through Lefort’s analysis of the totalitarian society:

it is not a political regime: it is a *form of society*, that form in which all activities are immediately linked to one another, deliberately presented as modalities of a single world; that form in which a system of values predominates absolutely, such that every individual or collective undertaking must necessarily find in it a coefficient of reality; that form in which,

⁵¹⁸ I will describe the relevance of Medina in the next paragraph. For now suffice to say that Muhammad’s mission of spreading the word Islam led him from Mekka to Medina. It is widely accepted in both Sunni and Shia Islamic orthodoxy that Medina forms the example of a perfect Islamic order of being.

lastly, the dominant model exercises a total physical and spiritual constraint on the behavior of private individuals.⁵¹⁹

One might speculate if this was not the original intent of Muhammad and the first generations of his companions. That is not the subject of this research. What is certain, however, is that Islamic societies since that era have always been typified by a divide between the mundane and divine. The desire to merge the realm of the immanent and the transcendent may have been professed by those worldly leaders seeking religious legitimacy, but for the most part of Islam's history Islamic societies have been typified by what Tibi describes as 'an oscillation between culture and politics'. The Islamists cause must be understood as a revolt against this traditionally occurring divide between the transcendent and the imminent. It seeks to abolish this divide and aims at the fabrication of that of society in which all individuals are the unfailing embodiment of the Medinan example of the perfect Islamic order of being. They argue that since the era of Medina, Islam has been weakened, both internally and externally, and the role of Islam has been relegated to the academic study centres of impotent scholars; Islam lacked any real influence over worldly affairs. The Islamists' mission therefore is a palingenetic movement of purification of internal enemies an annihilation of external enemies aimed at transforming the global order of being into the Medinan Garden of Eden. To this end they seek to re-Islamize and mobilize *all* Muslims according to the *islamists*, not the traditional, model of Islam. The source of their ideology is the Medinan model of Islam and the actualization of Islam's transcendence in the form of Shari'ah law. To these sources they apply a logicity of ideological thinking which drives the edicts of Islam, as they perceive them, to their ultimate logical conclusion. This type of legal-political Islamic thought is, however, most definitely *not* typical of most of Islamic societies' history but rather a revolt against it.

⁵¹⁹ Lefort and Thompson, eds., *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism*, p. 79.

From this small roundup of the different theories on Islamism it may become clear that many different elements are at play which cannot be summarized in one simple description. Much like Hannah Arendt's definition of totalitarianism as ideology and terror, any definition of Islamism will imply a far greater deal that it can explicate. In that sense, I will adopt the same methodology in describing the Islamist phenomenon as I have done in describing totalitarianism. That is, I will apply Arendt's methodology of 'discovering the chief elements of totalitarianism and analyze them in historical terms, tracing these elements back in history as far as I deemed proper and necessary. [...] to the Islamist phenomenon.'⁵²⁰

In addition, one of those dimensions that play a role in the background of this search for a unified definition is the question of Islam and Islamism. As I have explained repeatedly, I do not wish to enter into the theological heart of this debate for that would require an understanding of Islam that is beyond my capabilities. Most importantly, I do not feel that it is necessary. For the purpose of this research I need to know whether or not the Islamists' ideas can be seen as totalitarian ideologies and whether or not the movements they inspired can be seen as totalitarian movements. The whole question of an authentic or disingenuous interpretation of Islam, of what Islam is or is not, is something I will leave to Muslims and Islamic scholars as much as possible. It does not play a part in the methodology of this research outside of the questions of the potential appeal of the Islamist narrative on the Muslim masses and of its inner logical consistency. Since a part of this research is to serve as a warning to both Islamic and non-Islamic societies about the dangers of a totalitarian Islamists movement, I must pay some attention to a debate that lies at the core of the Islamist and counter-Islamist discourse, the issue of Islamic law and jurisprudence. It seems that I too cannot escape saying at least something about the relationship between Islamism and Islam.

⁵²⁰ Arendt, "A Reply to Eric Voegelin," pp. 402-403.

As I have shown Tibi already argued that whilst he disagrees with the Islamist narrative and the Islamist interpretation of Islam, he cannot deny that their foundations lie in Islam itself. Inescapably linked to any investigation into Islamism therefore, is an investigation into Islam itself.⁵²¹ Whilst the Quranic revelations and the hadith form the basis of the Islamic religion, these texts need to be interpreted. Whether one chooses the rationalist interpretation of intellectuals such as Tibi, the historical interpretation of Taha (1909-1985), or the near literalist interpretation of Ibn Abdul al-Wahhab (1703-1792), is inconsequential for the fact that interpretation is unavoidable.⁵²²

Having commented on the wide range of definitions of Islamism and the multiple dimensions that are involved in capturing all the aspects that are at play, the question is now which definition of Islamism I will use in this research. I centre my definition around the concept of the logicity of ideological thinking. Islamist ideologues consistently refer to the Quran, the example of the prophet, *hadith*, the Islamic jurists, *ulama*, and their jurisprudence, *fiqh*. In that sense the Islamist narrative is firmly based in the same sources as the reformist or liberal Islamic discourse. Therefore, in order to ascertain the logicity of the Islamist ideological thinking, we need to be acquainted with those sources and jurisprudence which they use in their writings. However, reading these primary sources themselves is not enough. As with my research into totalitarianism, attention must

⁵²¹“only research into sources can provide an adequate understanding of Islam” Tibi, *Islam between Culture and Politics*, p. 117.

⁵²² See: — — —, *The Challenge of Fundamentalism: Political Islam and the New World Disorder.*, Taha, *The Second Message of Islam*, Muhammad ibn Abd al-Wahhab, ed., *An Explanation of Muhammad Ibn Abd Al-Wahhab's Four Principles of Shirk*, Algar, *Wahhabism: A Critical Essay*. There is a divergent opinion when it comes to the harsh literalism of Wahhab. It would be beyond the reach of this research to go into that issue but for the sake of objectivity is refer to: Natana J. DeLong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (Oxford; New York: Oxford University Press, 2004).

be given to the socio-political and cultural circumstances that led to the arrival at the scene of this type of legal political theories.⁵²³

For this reason I will start my investigation into the nature of the Islamist phenomenon with a very broad definition of Islamism: Islamism is a palingenetic ideological movement whose principle of action is derived from the application of the logicity of ideological to the canonical sources of Islam. The resulting principle of action dictates and proscribes the fabrication, if necessary by force, of an islamists order of being, a global Utopian society, in which all of mankind is submitted to what they perceive to be the laws of the divine, the Shari'ah, and in which all are to be transformed into the living embodiment of a 'perfect' Muslim.

I will expand on this definition in the course of my analyses of the writings of Sayyid Qutb, Ayatollah Khomeini and Ayman al-Zawahiri. What one can notice in this definition is that it does not *explicitly* necessitate force or violence. As I will show, the concept of *jihad* is the pivotal concept used to refer to a conquering of the world for Islam.⁵²⁴ The concept of jihad, however, can be separated into violent

⁵²³ "The understanding of Islam by a sociologist who only knows the social facts is as much wanting as the understanding of the subject by a traditional orientalist, who is only familiar with the scripture. The scholar needs to be familiar with both the texts and the socio-structural reality that corresponds to them in order to achieve an adequate understanding of how that socio-cultural system functions." Tibi, *Islam between Culture and Politics*, p. 117.

⁵²⁴ Tibi himself explains this definition of jihad as follows: "Bereits im Vorwort habe ich von den Täuschern, die sich »Islam-Kenner« nennen, gesprochen, die uns unentwegt erzählen, dass Djihad im Islam nur »friedliche Anstrengung«, ja nur Selbstzähmung (gegen das Selbst und die eigenen niederen Triebe) bedeutet. Dies ist die rein philologische und dazu unvollständige Bedeutung von Djihad im Korantext, die die Verbindung des Djihad mit einem anderen koranischen Begriff, nämlich »Qital/Kampf« wegzaubert. Richtig ist: Auch der klassische Djihad schließt Gewaltanwendung ein, wenn diese der Verbreitung des Islam dient. Daraus gingen die klassischen Djihad-Kriege hervor, die Muslime »Futuhah/Öffnung« nennen. Damit ist die Öffnung der Welt für den Islam durch Krieg gemeint. Das übergeordnete Djihad-Ziel ist die Islamisierung der Welt. Diese Djihad-

and non-violent action. Often times erroneously, emphasis is placed on violent jihad whilst ignoring non-violent jihad. Both forms serve the same purpose and both need to be part of a sound counter-terrorism policy.⁵²⁵ Before I go into the details of these and other elementary concepts of the Islamist vocabulary, I must write a few words on some common misconceptions that surround the debate about Islamism.

1.2.1 A note on hidden presumptions

With any phenomenon that is sure to stir controversy, special attention must be given to presumptions in our own perception. Most often these presumptions are not explicit but rather implicit and they stand in the way of a n open and objective debate. I aim to illustrate this with the definition of Islamism given by the Dutch. In the words of the AIVD:

In this report radical Islam is understood to mean: The politico-religious pursuit of establishing - if necessary by extreme means - a society which reflects the perceived values from the original sources of Islam as purely as possible.⁵²⁶

There are a number of things which can be misleading when reading this definition as it is. The misleading elements are not a result of this definition but rather of our own presumptions.

1: the term politico-religious implies that there is such a thing as the non-political-religious. As I have shown briefly and will develop further in the next chapters, the Shari'ah incorporates legislation and edicts that have a clear political nature, extending beyond the mere personal life of the believer to include the community of believers,

Kriege dauerten vom 7. bis zum 17. Jahrhundert an". — — —, *Der Neue Totalitarismus: "Heiliger Krieg" Und Westliche Sicherheit*, p. 20.

⁵²⁵ Tibi refers to these two forms as Jihadists and institutional Islamists. See: *Ibid.*, p. 11.

⁵²⁶ Dutch General Intelligence and Security Service, "From Dawa to Jihad," (2004), 8. This research uses the word Islamism instead of radical Islam. The who, however, can be assumed as pointing towards the same phenomenon.

ummah, and even mankind as whole. Since the Shari'ah sets out rules pertaining to private law or family law, how are these rules supposed to be put into practice if not by some sort of political process? This is not only my question; it is the question that fuels the Islamists' movement. In addition, if Allah himself or through Muhammad proscribed these laws, then how can one be a Muslim without pursuing their implementation? Thus Islam seems to be by its very nature political.

2: The word 'radical' implies a quantitative and qualitative aspect. With regard to the qualitative aspect: If we would imagine a bell curve in which the democratic model signifies the mean, radical forms of politics would occupy the extreme ends of that curve. If we maintain the standard division of politics into left and right, then anti-democratic inclusivists' movements, such as communist movements could be considered as the radical left and anti-democratic exclusivist movements, such as Nazism, as the radical right. This conception of the word 'radical' therefore revolves around the presupposed idea that the non-radical moderate mainstream is devoid of political intolerance and is essentially democratic. This is how the word 'radical' is usually perceived in western politics. But in using the terms 'radicals' and 'moderates' to describe political currents in Islam we thereby transpose a western view of politics onto Islamic politics without asking the question whether this is valid or not. Are democracy, tolerance and the absence of violence equally representative of the moderate mean in the bell curve of Islamic political thought? The authors we will be discussing will, unsurprisingly, argue that this is not the case. In general, their argument is that the views of those that do maintain that democracy and tolerance are core values of Islam are the true innovators, the true radicals and above all non-believers that stand in the way of a just world order.

With regards to the quantitative aspect: The word 'radical Islam' presupposes that there is such a thing as moderate Islam of which

radical Islam is the deviation, automatically leading to the idea that those on the radical side are the minority whilst the mainstream is the majority. Again the question begs: is this true?

Thus in résumé, the danger in the use of the word 'radical Islam' lies in the fact that this term, perhaps subconsciously, implies in our common political vocabulary,

'The un-orthodox politico-religious pursuit of a minority group aimed at establishing - if necessary by extreme means - a society which reflects the perceived values from the original sources of Islam as purely as possible'.

We therefore expect that the opposite of radicalism must be devoid of such characteristics. In other words, *moderate* or *orthodox* Islam must be a non-violent majority which is quite happy to live in a democratic society in which its own values are not the standard and may not be even possible to put into practice. As such we run the risk of accepting *a priori* that moderate Islam is non-violent and democratic. If one goes one step further it becomes quite easy to accept that the mainstream signifies the true orthodox form of Islam, whilst the radical sides are a minority who fall outside of the scope of Islam proper. Moreover, in order to reform the radicals we need to make use of the moderates. That this is not merely a theoretical point in case is shown by the famous speech president Obama gave in Egypt in 2009:

Islam is not part of the problem in combating violent extremism -- it is an important part of promoting peace.⁵²⁷

Thus we see that if we take his statement seriously, the foundation of Obama's counterterrorism policy and legislation is based on the idea of a majority of non-violent peaceful Islamic orthodox Muslims who

⁵²⁷ B. Obama, "Remarks by the President on a New Beginning," ed. Office of the Press Secretary (The White House 2009). Also known as "The Cairo speech".

are willing to stand up against the radicalism of groups like Al-Qaeda based solely on their adherence to Islam itself. Differently put: the ideologies of groups such as Al-Qaeda is in direct opposition to the teachings of Islam. Suppose this is true. That would mean that the ideologues we will be discussing in the next few chapters are all wrong, for it is pretty clear from their writings, as we shall see, that they do not subscribe to the picture of Islam president Obama is painting. That is a fairly heavy accusation to make since some of these jurists, theologians, and intellectuals we will be discussing are not wanting for more recognition in the Islamic world than they are already receiving.⁵²⁸

Before we can discuss the content of the ideas and the inner workings of the logicity of their ideological thinking, we need to

⁵²⁸ Fortunately, recent developments have given us the opportunity to witness just such a 'stand-off' between the 'moderates' and the 'radicals'. Whilst numerous studies have already been done into the background of groups like Al-Qaeda and their representatives these studies have almost always been of Western design and based on Western observations on Islam. Recently a text has become available which sheds new light on the theological and legal philosophy of Al-Qaeda. In this document, called 'Exoneration', Dr. Ayman al-Zawahiri responds to a critical document written by his former ally, mentor and repudiated 'grandfather of jihadism' Sayyed Imam Al-Sharif, also known as 'Dr. Fadl', or Sayyed Imam (b. 1950). In this document, *Rationalizing Jihad in Egypt and the World*, Sayyed Imam attacks Al-Qaeda for what he sees as the illegitimate and un-Islamic use of violence against prohibited or innocent targets and calls for an end to the operations of the organization he used to inspire. Both documents offer an incredibly rich description of the procedures employed to legitimize their respective positions. Through an appeal to the classical sources, the Quran and the *Sunna*, and the most well respected of the classical jurist and theologians, *ulama*, both parties try to persuade the other of the error of their ways. As such it gives us the opportunity to come to terms with the political, legal and religious vocabulary employed by both parties, which is nothing if not rooted in the best of Islamic jurisprudence traditions, and more importantly, it provides insight into the *logicity of ideological thinking* which fuels the political actions of groups such as Al-Qaeda. I will enter into this debate in a separate chapter.

have a basic understanding of the science that fomented them. In the next paragraphs I will be discussing the basics of Islamic jurisprudence. In the subsequent chapter I will explain how the concept of jihad and its related sub concepts took shape in the classical and medieval period. The chapters that follow after that deal with the reception of these ideas in the modern age by ideologues such as Sayyid Qutb, Ayatollah Khomeini and al-Zawahiri, and which helped shape movements like the Muslim Brotherhood, the Islamic republic of Iran and Al-Qaeda. Some may hold that it is unfair to focus merely on the concept of Jihad; Islam surely is much more than Jihad? Whilst this is very true, Jihad, as in the struggle for Islam, is the acting agent which underlies the transformation of the non-Islamic world into the mirror image of the transcendent 'good'. It is the method by which the order of being is transformed in a historical process to ensure self- and world salvation. In other words the heart of the equivalent of the Gnostic speculation lies in the concept of jihad and its related sub concepts. Since the ideologues we will be discussing centre their arguments on these concepts it is only fair that we do so as well. Furthermore, as I have stated and aim to elaborate upon, the Islamic law is in its essence a law designed to be implemented in society and not just in the heart of the individual. It is in essence, a formula for self- and world preservation. Jihad, in its many different varieties is the means by which this implementation needs to take place and therefore deserves a central focus in this part of the book.

1.3 The basic vocabulary of Islamic jurisprudence

The primary foundation upon which all Islamic scholars build their legal-political worldview is in the narrowest sense twofold: the revealed word of Allah, the *Quran*, and the words and actions of Muhammad, the *hadith*. There are some additional sources such as his biography and the words and deeds of his closest companions to which I will return later. Upon the framework of the Quran and hadith and their exegesis, *tafsir*, a structure is built which consists of certain mechanisms of legal interpretation and textual exegesis, *usul al-fiqh*, which resulted in a corpus of jurisprudence, loosely termed *fiqh*. The consolidation of *fiqh*, i.e. the lines of legal argumentation related to religious matters, led to the formation of *Shari'ah* law. This in turn forms the secondary line of Islamic legal political argumentation. What is of importance for now is that if we realize that if we are to understand the conceptual matrix of the Islamists' ideologues, we need to get a grip on these two sources of argumentation.

1.3.1 Islam in relation to other religions

Before we begin our overview of the basic tenets and legal-political structure of Islam, it is necessary to make a brief statement concerning Islam's place amongst the other two great monotheistic religions that preceded it, namely Judaism and Christianity. This is necessary for two reasons.

First of all, like the Gnostic speculation, Islam claims, as do many other religions, that its narrative is the *only* formula for self- and world salvation. In so doing, it has to explain something about those revelations that preceded it and with which, for a lack of a better term, it is in competition. Since the aspiration of Islam, like Christianity and *unlike* Judaism, is universal, it cannot co-exist on the same footing with revelations that run contrary to its teachings. This in itself shouldn't require much explanation. By the very fact that a certain revelation claims universal salvation it automatically nullifies or diminishes all previous revelations. We can see this in the Catholic doctrine by which the Old Testament or *torah* was superseded by the

New Testament and the status of the Jews as God's chosen people was superseded by the Christian concept of *ekklèsia*.⁵²⁹ The same phenomenon occurs in Islam's relationship towards Judaism and Christianity, in which both the Torah and the Gospel are corrected by the Quran and the community of Muslims, the ummah, takes on the role of God's people.⁵³⁰ Throughout the Quran one can see references to this uncomfortable relationship towards Christians and Jews in particular. It is important to note then, that when we will read the work of Islamists ideologues, their often times very negative references to Jews and Christians is a result of this theological paradigm and not, as is often stated in their propaganda towards the west, a result of contemporary political conflicts in the middle-east.

From here follows another related phenomenon which warrants an investigation into the relationship between Muslims and non-Muslims from the perspective of Islam's canonical sources. As we will come to see in predominantly chapter three, four and six, Islamist ideologues, like their secular totalitarian counterparts, are obsessed with the 'other', the existential enemy which *needs* to exist in order to explain why the world is in the state of chaos that it is, at least in the ideologues perception. Whereas in secular totalitarian ideologies the existential enemy was the 'class enemy', or 'the Jew', the existential enemy in Islamists ideologies is, as we will see, often times defined as an internal enemy, the hypocrites (*munafiqun*) or as external

⁵²⁹ On a side note it should be mentioned that idea of 'being chosen' appears in Judaism, Christianity and Islam alike. The content of that concept and the implications thereof for non-believers, however, differs greatly between these religions. Judaism does not engage in any missionary activity and the idea of being chosen does not imply that non-Jews should be converted. Non-Jews can claim redemption without having to adopt Judaism as their faith. See for an insightful and detailed study on the concept of the chosen people in Judaism: S. L. Gurkan, *The Jews as a Chosen People: Tradition and Transformation* (London: Routledge, 2008).

⁵³⁰ Quran 3:110: "Ye are the best of Peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah. If only the People of the Book had Faith, it were best for them: among them are some who have Faith, but most of them are perverted transgressors."

enemies; the polytheists (*mushrikun*), the unbelievers (*kuffar*), the Christians and most often, the Jew. Hence in order to understand the stereotyping of the Jew or unbeliever as the existential enemy of the Islamists ideology, we need to understand something about the origins of that idea for the Quran and hadith themselves provide the ammunition for this negative stereotyping. If we do not pay attention to these origins, we will undoubtedly fail to understand their countless occurrences in contemporary Islamists ideologies and the authority and appeal they exert over their potential audience. As we have seen, Gnostic movements, both religious and secular need an existential enemy in order to explain the maladies of the world and to offer a solution to those maladies through a struggle against those enemies. Therefore, since this part of the research starts with a basic understanding of the Quran, we will briefly look at this background before continuing towards the basics of Islamic jurisprudence.

The religion of Islam is considered by Muslim themselves not to be a new religion, but rather a reiteration of the words of Allah, which were previously revealed to the Jews and later to the Christians by their respective prophets. These preceding revelations, however, have been marred by corruption at the hands of the Jews or misinterpretation by the Christians. The reason of the presumed corruption (*tahrif*) lies in the Quran's construction of the relationship between itself and its predecessors, the gospels and the Torah. It is this relationship that creates a basis for existentialist animosity. The Quran explicitly states that the *original* gospels and Torah were devoid of fault:

And do not dispute with the followers of the Book [Jews and Christians. D.S.] except by what is best, except those of them who act unjustly, and say: We believe in that which has been

revealed to us and revealed to you, and our Allah and your Allah is One, and to Him do we submit.” Q. 29:46⁵³¹

The Quran goes on to state that the Jews and Christians who would follow the *original* Torah (*taurat*) and Gospel (*injeel*) would be assured of their place in heaven regardless of the message of the Quran, since the Quran and the original revelations were similar:

Surely those who believe and those who are Jews and the Sabians and the Christians whoever believes in Allah and the last day and does good-- they shall have no fear nor shall they grieve. Quran, 5:69

In addition to the prophets sent by Allah to the Jews and Christians, Allah sent a prophet to “every nation” (Q: 10:47⁵³²) including prophets whose names are not even revealed (Q. 40:78⁵³³). This however, created a significant problem. For if the Quran is true, which of course it claims to be, than its message cannot contravene the message of

⁵³¹For quotations from the Quran I used the following online resource: <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/quran/>, "The Quran," (University of Southern California). It offers three distinct and widely acclaimed translations from Hafiz Abdullah Yusuf Ali, Marmaduke Pickthall and Muhammad Habib Shakir. Due to the sometimes archaic language of the Yusuf translation, alternatives offered by Pickthall or Shakir have been used for clarity. For reference I used the Quranic translations authorized by the former Grand Mufti of Saudi-Arabia Sheik 'Abdul Aziz bin 'Abdullah Bin Baz, and Sheik Umar Muhammad Fullata, former general secretary of the Islamic university of Medina in Saudi-Arabia Muhammad Taqi-ud Din Al-Hillali Muhammad Mushin Khan, *Interpretations of the Meanings of the Noble Quran*, 9 vols. (Riyahd, Saudi-Arabi: Dar-us-Salam, 1999).

⁵³²“To every people (was sent) a messenger: when their messenger comes (before them), the matter will be judged between them with justice, and they will not be wronged.”

⁵³³“We did aforetime send messengers before thee: of them there are some whose story We have related to thee, and some whose story We have not related to thee. It was not (possible) for any messenger to bring a sign except by the leave of Allah: but when the Command of Allah issued, the matter was decided in truth and justice, and there perished, there and then those who stood on Falsehoods.”

other revelations. This would mean that it needed to conform to the message of the Torah, the Gospels and to the holy books of others religions including those of the people whose message was until that time unbeknownst to the early Muslims. In other words, since only Allah can send the messengers, all messages need to be in harmony with each other. This obviously is not the case as can be seen, for example, by the Qurans statement that Jesus Christ did not die on the cross (Q. 4:157).⁵³⁴ The idea that all messages need to be in harmony, and the fact that they are clearly not created a problem that would define the relationship between the Muslims and the non-Muslim believers and that would pave the way for the radicalism and violence that has marked and is marking a part of Islamic history up till this day.⁵³⁵ The observation that the different holy books are not in agreement with each other logically leads to the one of several options, and I will focus here on the monotheistic religions. The Jews and Christians in Islam are recognized as people who have received messengers from Allah (Q. 5: 44-47), their books, prophets and their people as such hold a special place in Islam's worldview. They are the 'people of the book' (*Ahl al-Kitab*) As such, they cannot be forcefully converted and, as we shall see later on, hold special privileges when compared to polytheists and unbelievers under Shari'ah law.⁵³⁶ To claim authority however, the Quran needed to resolve the differences that existed between the various holy books and it did that by

⁵³⁴ "That they said (in boast), "We killed Christ Jesus the son of Mary, the Messenger of Allah";- but they killed him not, nor crucified him, but so it was made to appear to them, and those who differ therein are full of doubts, with no (certain) knowledge, but only conjecture to follow, for of a surety they killed him not:-"

⁵³⁵ Although I should reiterate that the history of Muslim and non-Muslim relations cannot and should not be seen as one exclusively dominated by violence or intolerance, that would be a gross misrepresentation of history.

⁵³⁶ Crone, *Medieval Islamic Political Thought*, p. 370. See for an indication of the various legal privileges and discriminatory regulations aimed at the 'peoples of the book' the regulations in the classic manual of the Maliki school of law Malik ibn Anas, *Al-Muwatta of Imam Malik Ibn Anas*. All schools of law feature such rules, *vide infra*.

claiming that the books of the Jews and Christians were in fact corrupted by human action.^{537 538} As such Muhammad, the prophet of Islam, was sent as the final messenger (*Khatim al-Anbiya*, or Seal of the prophets) to correct the corruption of the Jews and Christians:

The duty of the messenger is only to convey (the message).

Allah knoweth what ye proclaim and what ye hide. (Q. 5:99)

Islam therefore does not claim to invent a new religion but rather claims to restore the religion which has been revealed to the Jews and Christians by Allah. As such, Islam has a certain amount of respect for those Jews and Christians who follow the *original* revelations of Allah, but these revelations in their true form can only be found within the Quran itself, thus technically obliging Jews and Christians to follow the Quran.⁵³⁹ Evidence to this attempt at restoration is the fact that in the Quran all the prophets of Judaism and Christianity are *Muslims* who were sent to establish the religion of Allah (Q. 42:13). Since these attempts were corrupted by the people, Muhammad was sent to correct these corruptions and thus founded Islam as the only uncorrupted revelation of Allah. In so doing, the Quran creates for itself a monopoly on the truth and establishes itself as the only means of knowing that truth.^{540 541} The role accorded to the Jews and

⁵³⁷ See for instance, Q. 2:53, 59, 79 “And remember We gave Moses the Scripture and the Criterion (between right and wrong): There was a chance for you to be guided aright.”[..] “But the transgressors changed the word from that which had been given them; so We sent on the transgressors a plague from heaven, for that they infringed (Our command) repeatedly.”[..] “Therefore woe be unto those who write the Scripture with their hands and then say, “This is from Allah,” that they may purchase a small gain therewith. Woe unto them for that their hands have written, and woe unto them for that they earn thereby.”

⁵³⁸ See also Q. 5:1-87

⁵³⁹ Compare the discrepancy between the fate of Jesus in the Gospel and the Quran. A Christian cannot be a follower of the ‘true faith’ if he adheres to a version of Allah’s revelation that is at odds with the Quran.

⁵⁴⁰ The importance of this rectification of the pre-Quranic holy books is exemplified by the fact that the five daily prayers, or *salah*, revolve around reciting the first chapter of the Quran, Al-Fatiha. The last line of this Sura

reads: “Keep us on the right path, the path of those upon whom Thou hast bestowed favors. Not (the path) of those upon whom Thy wrath is brought down, nor of those who go astray.” When one looks at how some of the classical and universally recognized scholars of Islam interpreted the words “of those upon whom thy wrath is brought down, nor those who go astray” it becomes clear that they are directed at the Jews and Christians. The extensive exegetic work: Muhammad Mushin Khan, *Interpretations of the Meanings of the Noble Quran*. Volume 1, p. 30, references the classical collections of prophetic sayings from At-Tirmidhi, Abu Dawood and Bukhari. See for instance hadith 6/4775 in Bukhari, *Shahih Bukhari*. The eminent Quranic exegete Ibn Kathir equally states in his explanation of this verse “These two paths are the paths of the Christians and Jews, a fact that the believer should beware of so that he avoids them. The path of the believers is knowledge of the truth and abiding by it. In comparison, the Jews abandoned the true knowledge. This is why ‘anger’ descended upon the Jews, while being described as ‘led astray’ is more appropriate of the Christians. [...] Allah said about the Jews “Those (Jews) who incurred the curse of Allah and His wrath” (Q 5:60 D.S.) Ibn Kathir, 10 vols., Tafsir Ibn Kathir (Riyadh: Darussalam, 2003). Volume 1, p. 87

⁵⁴¹ While a Quranic text exists that states “Surely those who believe, and those who are Jews, and the Christians, and the Sabians, whoever believes in Allah and the Last day and does good, they shall have their reward from their Lord, and there is no fear for them, nor shall they grieve” (Q 2:62) this text needs to be interpreted according to another Quranic text which states: “And whoever seeks religion other than Islam, it will never be accepted of him, and in the Hereafter he will be one of the losers” (Q 3:85). This position is further validated by a saying of the prophet “By him in whose hand is the soul of Muhammad, any person of this community, any Jew, or any Christian who hears of me and dies without believing in what I have been sent with will be an inhabitant of hell.” The text of Q. 2:62 is meant to stress the fact that the Jews who followed the Torah were to be saved on judgment day until the coming of Jesus, another prophet of Allah. After that, the Jews who kept following the Torah were in violation of Allah’s prophet. Christians likewise were redeemed if they followed Jesus up to the moment of Muhammad’s arrival. After that both Jews and Christians (and Sabians) could only redeem themselves by following Islam, thus finishing the unfolding of Allah’s religion. The idea that Muhammad is the vessel which made Allah’s religion clear to world, and which abrogates all previous existing religions is stated in Q.5:3 the last verse to be revealed “Today I have perfected your religion for you and completed My favor upon you, and I please that your religion be Islam”. See Ibn al-Naqīb al-Misri and Keller, *Reliance of the*

Christians is an important one as we shall see when we discuss Khomeini and Al-Zawahiri who, much like their secular counterparts, identified Islam as the sacred formula for self- and world salvation, and the Jew and Christian as the existential enemies that thwarts the attempts at this salvation.⁵⁴² This is in part based on the Quran description of the Jews and Christians as: Quran 5:82 "You will surely find the most intense of the people in animosity toward the believers [to be] the Jews and those who associate others with Allah; and you will find the nearest of them in affection to the believers those who say, "We are Christians." That is because among them are priests and monks and because they are not arrogant". However, more on this topic later on in the chapters three and further, in which I will explicitly deal with the image of the Jews and Christians as existential enemies.

The Question which is important right now is how Islam's view of itself as the transcendent and immanent truth relates to the domain of real world experiences. To what degree does Islam offer

Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik, pp. 848-849. This position is confirmed by all major schools of Sunni Fiqh. *Vide infra*

⁵⁴² It is important to note that the anti-Semitism of groups such as Al-Qaeda is part of a much larger phenomenon in the Islamic world which by and large harbours strong anti-Semitic feelings. See for instance PEW Global Attitudes Project, "Islamic Extremism: Common Concern for Muslim and Western Publics," (2005). This survey indicates that over 90% of the Middle-East has an outspoken negative view on Jews. Countries that are farther away from the Israeli conflict, if that even is a deciding factor, such as Morocco or Indonesia still bolster the 75-88 percentile range. There has been a vast array of publications on this topic and it is only appropriate to indicate its origins in the founding acts of Islam itself. See amongst others: Andrew G. Bostom, *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History* (Amherst, N.Y.: Prometheus Books, 2008), Gabriel Schoenfeld, *The Return of Anti-Semitism* (London: Politico's, 2005), Hans Janssen, *Van Jodenhaat Naar Zelfmoordterrorisme* (Heerenveen: Groen, 2006). For a rebuttal of the idea that Islam itself is inherently anti-Semitic and that anti-Semitism is rather an unlawful addition to the Islamic curriculum see: Tarek Fatah, *The Jew Is Not My Enemy: Unveiling the Myths That Fuel Muslim Anti-Semitism* (Plattsburgh, NY: McClelland & Stewart, 2010).

prescriptions for the organization of public life? Does it have a clear political dimension? To what degree does it dictate the organization of private life? Is its message so detailed that it regulates *all* affairs of life to that point which the philosopher Eric Hoffer so eloquently describes as: “The savior who wants to turn men into angels is as much a hater of human nature as the totalitarian despot who wants to turn them into puppets”?⁵⁴³

To answer these questions we will look to the vessel into which centuries of Islamic legal and theological reasoning have crystallized, namely the Islamic law.

1.3.2 The Shari’ah, Set in stone or human labour?

We start our exploration by reiterating the observation that Islamic law or *Shari’ah*, is, in the words of Joseph Schacht

[..] the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself. [...] Theology has never been able to achieve a comparable importance in Islam [...] it is impossible to understand Islam without understanding Islamic law.⁵⁴⁴

In that sense, the religion of Islam and the legal commandments contained in both the revelation received by Muhammad and in the ones that evolved out of the legal-theological debates that followed the revelation are one and the same. Therefore, to speak in the terms of Claude Lefort, one could say that the Shari’ah symbolizes both the transcendent ideas of ‘power, truth and knowledge’ as well as their immanent representations.⁵⁴⁵ In other words, since the Shari’ah is the embodiment of the divine it recognizes no secular concepts, and no

⁵⁴³ Eric Hoffer, *Reflections on the Human Condition*, 1st ed. (New York,: Harper & Row, 1973). Aphorism 13

⁵⁴⁴ Schacht, *An Introduction to Islamic Law*, p. 1.

⁵⁴⁵ As we shall see later on, the interpretation given by not only Islamists Ideologues but also more traditional jurists and clergy is that Shari’ah law is a program of law that regulates every aspect of human life.

realm of worldly existence lies outside of its borders. Outside of the boundaries of Shari'ah lies unbelief and as such the Shari'ah is a totalist concept. However, this view is the abstract, ideal-type view of the Shari'ah; the reality of Islamic law is something very different although modern reformist movements may want to reduce the Shari'ah back to this ideal type.⁵⁴⁶

The reality of Islamic law has always been that it existed alongside positive state laws. It may have been referred to symbolically as the source from which all authority flows, but in reality Islamic law has often taken a backseat to the needs of the rulers. In principle this is of no concern to us. We are interested in the thinking of Islamists ideologues but for the sake of the counter-terrorism debate it is important that we shed some light on this issue. The discrepancy between Islamic law and the reality of worldly law can be described as follows:

Because Islamic law is extremely idealistic in its approach, assuming a natural desire to conform to the truth, and the existence of a "holy" society, disposed to religious conformity, there has always existed a parallel system of justice administered by the state.⁵⁴⁷

Norman Calder correspondingly argues:

No one would deny that the explorations of the law were intended to influence, and might be used sometimes to control, practice; but the great exponents of the tradition would not, I think, admit that their work was valueless just because no one paid (practical) attention to it. The impulse to

⁵⁴⁶ See also Calder Norman, "Law," in *History of Islamic Philosophy*, ed. Seyyed Hossein Nasr and Oliver Leaman (London; New York: Routledge, 1996), pp. 979-998.

⁵⁴⁷ Cyril Glasse, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopedia of Islam*, Rev. ed. (Walnut Creek, CA: AltaMira Press, 2001), p. 419.

explore the law was (also) for its own sake, as an act of piety complete in itself [..]⁵⁴⁸

As we shall see in chapter two, it is exactly this subservience to worldly needs which sparked the revivalist movements and typifies the core frustration which fuels Islamists movements.

The formulation and application of Shari'ah law is for the most part everything but unequivocal, in reality it has been, and still is, susceptible to different schools of legal reasoning, the demands of the ruling class and the everyday realities of life in Islamic societies. Having said that, it should be emphasized that whilst the differences of legal opinion vary greatly when it comes to the rules pertaining to private law or the ritual rules of worship, this variety of opinions seems much smaller when it comes to the rules pertaining to the political dimensions of Islam and the rules of war in particular.⁵⁴⁹ Does this mean that the whole concept of 'Shari'ah' is null and void? Is it so susceptible to time, place and interpretation that it lacks any fundamental characteristics? Does this ultimately mean that the Shari'ah is unfit to fulfil the role of the totalitarian or Gnostic 'formula for self and world preservation'? The short answer is no.

Whilst the different schools of Islamic legal reasoning and different sub-sects of Islam differ on the details of the foundations and interpretations of the Shari'ah, the basic tenants of the faith and its laws on the whole remain unchallenged. It is essential for our

⁵⁴⁸ Norman, "Law," p. 980.

⁵⁴⁹ This is exemplified in the remarkable difference between two handbooks on Islamic law. The first is a handbook on the laws of rituals: al-Jaziri, *Islamic Jurisprudence According to the Four Sunni Schools*. The second is a handbook on the laws of jihad: al-Tabari, *Al-Tabari's Book of Jihad, a Translation from the Original Arabic*. Whilst the former spends nearly 1000 pages discussing appropriate attire, the position of the hands during prayer and such, the latter needs only around 340 pages to explain the different opinions regarding the rules of jihad. Most of which is spent on the rules pertaining to dividing the spoils of war and not on the permissibility of killing unbelievers or declaring war against them.

understanding of the legitimacy of Islamists' ideologies to point out that the bandwidth given to interpretation is in reality rather small and changes in Shari'ah law are difficult to achieve for a number of reasons. Certain elements are so essential, their foundations so unequivocal, that beyond their boundaries lies unbelief. There are for instance no Islamic theologians or jurists who would claim that Allah is one of three, such as in the holy trinity, or that Muhammad is not a prophet, or who would hold that the Quran is merely a human literary invention whose content can be put aside when human reason has developed a better or more appealing alternative. In addition, since Islam knows no official clerical hierarchy, anyone deemed sufficiently schooled to interpret the canonical sources can give legal opinions, or fatwa's. This meant that in the largest part of the history of Islam there have been ample jurists who in return for compensation would be willing to give an interpretation of Islamic law which suited the ruler of that era. The core of the Islamists movement as we will see shortly is a revolt against this practice of liberal interpretation and a rallying call for a return to 'pure Islam'.

Before we can begin to have any discussion over Islamist ideologies and their respective *fiqh*, it is imperative that we have a basic understanding of those aspects of Islamic legal reasoning that bind all sub-sects of Islam together. In so doing it will become apparent in which way Islamism diverges from other forms of Islam, how the logicity of ideological thinking is present in the main body of Islamic legal thinking, and which historical precedents allowed for the emergence of Islamism as such.

1.3.3 The Scriptural foundations of the Shari'ah

The foundations of the Shari'ah, and thus of the Islamic faith, upon which all of the sub-sects of Islam agree are threefold: The Quran, the Hadith and the Sunna. The roots of jurisprudence (*usul al-fiqh*) were

built on top of these foundations.⁵⁵⁰ There is a generally agreed upon hierarchy within these methods of fiqh which places the Quran on top, followed by the examples of the prophet (*hadith*), the custom of the companions of the prophet (*Sunna*), analogy (*qiyas*) and the consensus (*ijma*) of the community (*ummah*).⁵⁵¹

One of the most important conflicts within Islamic theology and jurisprudence which exemplifies the debate within the class of Islamic scholars has been the struggle between the rationalist (*ahl al-ray*) who accorded a major position in this hierarchy to reason and claimed amongst other things that the content of the hadith could be abrogated by general principles from the Quran. Their position was vehemently opposed, and eventually won, by the traditionalists.⁵⁵² I will come back to that point briefly in our discussion of Shi'a Islam later on. I mentioned it here to indicate that reason is in Sunni Islam in general subordinate to the canonical sources. If a certain Quranic verse or hadith thus says that the Islamic community should act in a certain way, then the community will not be able to amend that statement by invoking reason. In that sense Shari'ah law can be unalterable or would require legal acrobatics that are very hard to perform. In addition and with respect to Islamism, the Quranic verses and hadith that relate to jihad are in general very clear thus making it even harder to modify their meaning. Most Islamists writers are Sunni

⁵⁵⁰ In order to understand and translate these foundations into a practical legal mechanism by which justice could be administered, the jurists (*faqih pl. fuqaha*) had at their disposal a number of instruments which are familiar to jurist in positive law these days as well namely: Analogy (*qiyas*), the consensus (*ijma*) of the community (*ummah*), abrogation (*nashk*), considerations of public interest (*maslahah , ursalah*) and extrapolation. Through these principles a jurist could come to a ruling in a certain specific case (*itjihad*). There are also some methods of fiqh which are controversial and whose acceptance depends on the sub-sect of Islam one is studying. These are the preference of jurists (*istihsan*), reason ('*aql*) and a jurist's opinion (*ra'y*)

⁵⁵¹ See for instance Zubaida, *Law and Power in the Islamic World*, p. 11.

⁵⁵² Binyamin Abrahamov, *Islamic Theology: Traditionalism and Rationalism* (Edinburgh: Edinburgh University Press, 1998), p. vii.

and in addition belong to a tradition of legal reasoning called Salafism, which endorses a strict adherence to the text of the canonical sources in rejection of an allegorical reading. I will now go into some of the details of these different foundations and methods of fiqh since the Islamists discourse is very much a part of, and to some extent an outgrowth of this body of legal reasoning. Furthermore, one cannot understand the writings of these ideologues without having a firm grip on the concepts I am about to explain.

1.3.3.1 The period preceding the revelation of the Quran

The period which preceded the revelation of the Quran to Muhammad is often times referred to, as *al-Jahiliyyah* meaning ‘the time of ignorance’.⁵⁵³ In the view of Islam, the period which came before it is marred by pagan rituals, polytheism and the decay of the preceding monotheistic religions. In short Islam and jahiliyaah are mutually exclusive. The term ‘*Jahiliyyah*’ is of particular importance since it has been used by many of the 19th and 20th century’s founders of Islamism as an accusation against the corruption and degradation of what they consider ‘pure’ Islam by modernizing forces.⁵⁵⁴ In particular it has been formulated as one of the central axis of Islamist thought by Sayyid Qutb as I will discuss in chapter three. The Arab and Bedouin society from which Muhammad would emerge was not entirely devoid of laws or at least a minimal form of political order. It was, in the words of Schacht, however, marked by “the absence of legal protection for the individual outside his tribe, the absence of a developed concept of criminal justice [...] The responsibility of the tribal group for the acts of its members, and therefore blood feuds.”⁵⁵⁵

⁵⁵³ Glasse, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopedia of Islam*, p. 234.

⁵⁵⁴ The chapter on Sayyid Qutb, chapter three, will deal extensively with the subject of jahiliyaah.

⁵⁵⁵ Schacht, *An Introduction to Islamic Law*, p. 7.

Criminal law often took the shape of tort cases in which the accused party would be liable for damages that needed reparations on the penalty of a blood feud amongst the parties involved. These cases were overseen by an appointed arbitrator (*hakam*) who was mostly drafted from the class of soothsayers (*kahin*), clearly a pagan figure. The *hakam's* decision, although not enforceable, was given legal effectiveness by the fact that both parties to the case agreed to provide securities in the form of goods or slaves. The decisions of the *hakam*, as those of specific charismatic leaders of tribes who enjoyed popular consent, over time begot the status of common law, custom, or *Sunna*. Some of these customs have found their way into the *Sunna* of Islam sometimes rather directly other times heavily modified or via an explicit rejection.⁵⁵⁶ These pagan Arab and Bedouin practices notwithstanding, it was clear that the lack of protection for the individual outside of his group, the lack of concepts of criminal justice and of a foundation for political order outside of one's own tribe lead to a situation which in some respects reminds us of the Hobbesian state of nature. The casuistic approach of the Jahiliyyah was firmly focused on resolving conflicts in the here and now by rules that, from an ethical or religious standpoint, must have seemed arbitrary and which were founded on principals of maintaining or achieving a position of power rather than on an appeal to any overarching ethical concept of justice. The mission of Muhammad was therefore not purely the one of a legislator or a founder of a *polis*, although he certainly encapsulated these functions, but rather to bring about the formulation for a new legal, political and above all moral ontology rooted in the reiteration of the central tenants of Monotheism. The advent of Islam therefore heralded in a new order of being. The ummah, the community of believers became the instrument, initially guided by Muhammad, which would transform the Arab world into this new order of being.

1.3.3.2 The revelation of the Quran to Muhammad

⁵⁵⁶ *Ibid.*, p. 10.

The revelation of the Quran to Muhammad is presumed to have started in 610 and ended in 632 with the revelation of the words

This day have those who disbelieve despaired of your religion, so fear them not, and fear Me. This day have I perfected for you your religion and completed My favor on you and chosen for you Islam as a religion. Quran, 5:3

The Quran is held to be the direct word of Allah, eternal and uncreated in its essence and sense, and, with the exception of some rationalist (*Mu'tazilites*) which would come to have a profound influence on *Shi'ism*, and the relatively small sect of the *Kharijites*, the Quran in orthodox *Sunni* Islam is seen as being uncreated.⁵⁵⁷ This question of created-ness or uncreated-ness would become important when the validity of reason as a method of *fiqh* and indeed as a basis for religion itself would appear. Those *fugaha* who belong to the traditionalistic school (*Ahl al-Hadith*) would employ reason to prove the validity of prophecy and the truth value of the Sunna whilst the rationalists, in their most extreme position, argued that man, if devoid of prophecy and revelation, could still reach a position of knowledge of religion and Allah by virtue of their reason. The reason why this discrepancy between the rationalists and the traditionalist is important is the following: If the Quran is uncreated and thus reflects Allah's words to the letter, the amount of bandwidth available in interpretation, *ijtihad*, and its ensuing jurisprudence is necessarily severely limited in comparison to the position that the Quran is created and thus essentially a man made book, no matter how divinely inspired it may have been. This does of course in no way imply that the rationalists denied the fact that the Quran, even if created, reflected the nature of the divine, but it gave them more freedom to employ reason when it came to interpretation of the text itself. We shall come back to this subject when we discuss the formation of the different schools of law and when we discuss those

⁵⁵⁷ See for this discussion: Abrahamov, *Islamic Theology: Traditionalism and Rationalism*.

elements of this study which are relevant to counter-terrorism in the third part of this book. What is important to note besides this issue of bandwidth, is that the Islamists groups we know of today who belong to the Sunni brand of Islam, are all related to the 'narrow bandwidth' traditionalist school of thought and all go through great lengths to show the scriptural sources that underlie their 'radical' standpoints.

The Quran itself is not a codex of laws in the strictest sense. Although it contains 6236 verses, only 500 of these have legal content.⁵⁵⁸ The Quran therefore cannot be expected to provide a legal perspective, let alone ruling, for all of the situations that occur in the life of man, especially not in today's modern world. This is where *Usul al-fiqh* comes into play. We already noted the hierarchy in the foundations of the *Shari'ah*. Whereas the Quran forms the top of this pyramid, the *Hadith*, *sirah* and *sunna* offer the *fuqaha* and *mujtahids* a means of studying the sayings and examples of the prophet Muhammad who, to the Muslims, represents the epitome of the Islamic way of life in order to come to legal ruling which is appropriate for that situation.⁵⁵⁹

1.3.3.3 The Sirah, Hadith and Sunna

The Sirah

Following the death of Muhammad in 10/632, an attempt was made to recount the life of Muhammad in all its detail insofar as witness accounts provided such information. One of the first biographers of

⁵⁵⁸ Zubaida, *Law and Power in the Islamic World*, p. 12. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Us-UI Al-Fiqh*, p. 3. Hallaq also argues that, although these 500 verses seem insignificant in reference to the total amount of verses, the legal verses are often longer and, in contrast to the non-legal content of the Quran, are almost never repeated in the text of the Quran. Thus Hallaq argues that the importance of the legal verses in reference to the non-legal material of the Quran is not to be underestimated.

⁵⁵⁹ Q. 33:21 "Certainly you have in the Messenger of Allah an excellent exemplar for him who hopes in Allah and the latter day and remembers Allah much."

Muhammad, Ibn Ishaq (born 85/704-died 148/767) thus wrote an extensive biography containing Muhammad's life, his military campaigns, the names and actions of his companions called *Sirat Rasul Allah* or *Life of the Apostle of God*. Although the original has been lost, much of it has been incorporated in a somewhat edited version, in the work of Ibn Hisham.⁵⁶⁰ The Sirah forms one part of the overarching concept of Sunna to which we will arrive at the end of this paragraph. The Sirah does not form the pinnacle in terms of the hierarchy of the sources of fiqh. The reason for this is quite important. Often times those who have a *male fide* intent to speak ill of Islam will refer at length to the Sirah. The Sirah feature some very inflammatory statements, and tales of blood thirst purportedly made by Muhammad, mostly against Jews.⁵⁶¹ The credibility of the Sirah

⁵⁶⁰ Abd al-Malik Ibn Hisham, Muhammad Ibn Ishaq, and Alfred Guillaume, *The Life of Muhammad: A Translation of Ishaq's Sirat Rasul Allah* (Karachi; New York: Oxford University Press, 2001). There are also other biographies of the life of Muhammad but the Sirah Rasul Allah of Ibn Ishaq stands out as one of the most authoritative. A second highly influential work is *Tarikh al-Tabari*, *History of the Prophets and Kings*, by Muhammad ibn Jarir al-Tabari (born 216-838/ died 301-923). The *Tarikh al-Tabari* counts 40 volumes which deal with history in the largest sense, starting from the Israelites, the arrival of Muhammad and ending with the growth of the young Islamic empire. In that sense it is far larger in its scope than the work of Ibn Ishaq. Both biographies, however, were the first attempt at a concise overview of the life, examples and sayings of the prophet and his companions and thus formed the basis of what was to become the science of interpreting the Quran and distilling legal rules from the example of the prophet's life.

⁵⁶¹ See for instance the story of the conversion of Huwayyisa: "The Apostle said: 'Kill any Jew that falls into your power.'" Upon hearing this prophetic command, Muhayyisa b. Masud leapt upon Ibn Sunaya, a Jewish merchant with whom he had social had business relations and killed him. The brother of the slain man, Huwayyisa, then turned to Muhayyisa and said: "You enemy of God, did you kill him when much of the fat on your belly comes from his wealth?" Muhayyisa answered: "had the one who ordered me to kill him ordered me to kill you I would have cut your head off." Huwayyisa replied: "By God, a religion which can bring you to this is marvellous!" The Sirah then records how Huwayyisa, upon bearing witness to the power of this religion, became a Muslim. The Sirat records how Muhammad repeatedly exalts the virtue of terror: "Our attack upon God's enemy cast terror among the Jews,

however is questioned by some fuqaha and mujtahid and it is almost never used as a primary source in *usul al-fiqh*, although it is being used in the more general manner of illuminating the primary sources through the stories contained in the *Sirat*. According to Hallaq, the *Sirat* did not play a major part in *fiqh* but was an important factor in early Islamic politics.⁵⁶² The main reason why it is not used as a source of *fiqh* is because its historical validity is often disputed due to its lack of a trustworthy chain of narrators. I will not go into these details but will refer to the excellent introduction of Guillaume's translation of Ibn Ishaq's *Sirat Rasul Allah*. Most interestingly, Islamists ideologues only very seldom refer to the *Sirah* and in the cases which I could identify, only refer to stories that could be backed up by evidence from the *hadith*. The importance of this being that if the Islamists movements such as al-Qaeda were looking for prophetic example to justify acts of brutal violence, then the *Sirah* would offer ample evidence. Yet, they do not do so. This underpins their intention to show that their ideology is based only upon those sources of Islam and Islamic law that can withstand rigorous investigation. Had al-Qaeda wanted to *abuse* or *distort* Islam for their own political reasons, then surely they would have made ample use of the *Sirat*. The reality, however, is that they do not, and restrict themselves to the trodden path of orthodox Islamic *usul al-fiqh*.

The Hadith and the era of the Salafiyaah

The *Hadith* are a collection of traditions, examples of the life and sayings of the prophet Muhammad. Unlike the *Sirah*, which is mostly a biography without a clear attempt at systemization and authentication, the science of *Hadith*, or '*ilm al-Hadith*', endeavours to

and there was no Jew in Medina who did not fear for his life." *Ibid.*, pp. 368-369.

⁵⁶² *Ibid.*, pp. xix-xl. Hallaq, however, tells us that the *Sirat* did play a large role in early Islamic politics and 'constituted a normative, exemplary model'. It is mentioned that the Caliph Uthman was assassinated because his failure to follow the *Sirah* of the prophet. Hallaq, *Sharia: Theory, Practice, Transformations*, p. 40.

systematize and authenticate the validity of all the sayings, examples and actions that were attributed to Muhammad by his companions and by the subsequent generations of companions. The relevance of the examples and sayings of the prophet is founded on the Quranic verse 5:92:

Obey Allah, and obey the Messenger, and beware (of evil): if ye do turn back, know ye that it is Our Messenger's duty to proclaim (the message) in the clearest manner.

These saying and actions of the prophet are important for two reasons: Firstly, they explain or further elaborate on the meaning of the verses in the Quran. Secondly; since only 500 verses of the Quran actually contain legal material, the example of the prophet becomes a source of law in itself. The hadith themselves consist of two types; namely the *hadith qudsi*, which narrate the voice of Allah through the prophet, and the *hadith sharif*, the words of the Prophet himself. The latter category vastly outweighs the former and the prophet thus begets a central role in Islamic ontology as the living embodiment of the Quran and the religion of Allah.

The hadith deal with nearly every aspect of Muslim life from the conditions for warfare (*jihad*), to private law, criminal law, family law, laws regarding ritual, religion, prophecies about the end of days, and seemingly tedious details such as the correct way to mount a horse or the prohibition for men to wear silk. As such, they offer a whole body of rules, regulations, duties, and rights which should guide man towards becoming exemplary Muslims. There are numerous collections of hadith but the most esteemed in Sunni Islam are, in order of their respective standing, the *Sahih al-Bukhari* (256/870) and *Sahih Muslim* (261/875). As an indication of the vastness of their subject matter, the collection of Bukhari contains 7,397 hadith under 3,450 subject headings. There are four additional collections whose standing is somewhat lower than the two just mentioned, but which never the less enjoy are great deal of authority. These are the collections of Dawud (261/875) Tirmidhi (279/892), an-Nasa'i

(303/915) and Ibn Maja (273/886). These six collections together form the classical canon of Sunni Islam (*al-kutub as-sittah*).^{563 564 565}

The actual textual content of the hadith is called the *matn*. In the Sunni hadith we therefore find verses which consist of two parts: the first part is the *isnad* which relates the chain of companions back to the original source (Muhammad) and then the *matn* of the verse itself. The following hadith exemplifies this system and is of special concern to our study:

Isnad: Narrated Zahdam bin Mudrab:

Matn: "I heard Imran bin Husain saying, "The Prophet said, 'The best people are those living in my generation, then those coming after them, and then those coming after (the second generation).'" Imran said "I do not know whether the Prophet mentioned two or three

⁵⁶³ See chapter three of: Kamali, *Principles of Islamic Jurisprudence*.

⁵⁶⁴ The jurists that were involved in the study of the hadith were acutely aware that certain hadith might have been fabricated by persons who would stand to gain from it, often times in the form of political or theological legitimacy. In order to prevent false hadiths from polluting the collections, a system was enacted which categorized the hadith as either clearly authentic (*sahih*), good (*hasan*), weak (*da'if*) or fabricated (*mawdu*). The hadith that we can now read in these collections, are accompanied by a chain of transmitters (*isnad*) that ultimately lead back to the companions of the prophet and the prophet himself, and whose function it is to validate the authenticity of the hadith. See: Ibid.

⁵⁶⁵ Shi'a Islam uses a different collection of Hadith. The main reason is that the Sunni Hadith rely on the transmission of the sayings and examples of the prophet through all of his close companions. Of these companions, four would assume leadership of the young Muslim polity after the death of Muhammad. These four successive Caliphs, which are in Sunni Islam referred to as the rightly-guided Caliphs, *al-khulafa ar-rashidun*, are: Abu Bakr, Umar, Uthman and Ali. The Shiites do not recognize the claim to the title of Caliph of any other companion than Ali and his son Hasan. The foundation for this rejection of the position of the other caliphs is the Shiites belief that a caliph can only be appointed by Allah or his messenger and that Muhammad intended for Ali to become the first caliph instead of Abu Bakr. As such, Shi'a Islam views the three other Caliphs as illegitimate usurpers of the title and thus rejects their constitutive influence on the formation of the hadith.

generations after your present generation. The Prophet added, 'There will be some people after you, who will be dishonest and will not be trustworthy and will give witness (evidences) without being asked to give witness, and will vow but will not fulfil their vows, and fatness will appear among them.'⁵⁶⁶

This specific hadith is an important one for our study. In it, the prophet is announcing the degradation of the Islamic community, the equivalent of the Gnostic's fall from Eden, the *prima causa* of chaos and decline. Since his stature is that of a prophet, this degradation seems inevitable. For this reason, we can see in the discourse of Islamists a *palingenetic* call for a return to the once perfect society of the earliest Muslims, the time of the first companions of Muhammad. The generations to which Muhammad is referring are known as the period of the *Salaf* or predecessors.⁵⁶⁷ They are ranked as follows: the contemporary companions of the prophet (*Sahaba*) this includes the four rightly-guided caliphs (*Rashidun*), the successors who knew the sahaba (*Tabiun*), and lastly the successors of the successors (*Taba' at-Tabiin*). The further one is removed from the original *sahabah*, the less credible their testimony, the *isnad* we referred to earlier, concerning the authenticity of the prophet's utterances or examples becomes. Hence the time of the prophet and the *Salaf* is viewed in Islam as that time in which Islam was represented in its truest form. Since then, the Islamic community and the Islamic faith have been in steady decline. It is therefore not unsurprising that those who would seek to bring Islam back to a 'pure form' would look to this point in the history of Islam as their vision of the ideal Muslim community. One of the movements that originally formulated this need for a

⁵⁶⁶ Bukhari, *Shahih Bukhari*. Volume 3, Book 48, Number 819

⁵⁶⁷ It is the lack of *isnad* in ibn Ishaq's *sirat* that has caused his work to be regarded in low esteem and of little value to *fiqh*. The chain of transmitters is essential if a certain hadith is to be of influence in the forming of a legal opinion. One will find that those elements of the *Sirah* that do get used are accompanied by a hadith with a sound chain of transmitters that can verify its content.

return to the original Islam is aptly called the *salafiyah*. What we are in fact witnessing is the same call for *Palingenesis* that we saw in the romantics critique of modernity and which formed one of the intellectual cornerstones of the fascist and later, totalitarian political agenda. Palingenesis is usually accompanied by a perceived need for purification. It is therefore not surprising that the Islamic scholars that argued for the Palingenesis of the society of the early companions, such as the Sunni theologian Ibn Abdul Wahhab, or the Shi'a counterpart, Ayatollah Khomeini, also use the same vocabulary of purification, and sometimes did not hesitate to achieve such purification by means of violence. Thus, the idea that the earliest period of Islam was also its finest hour entails the three elements of Gnosticism we discussed earlier: Eden, the fall from Eden and the Return to Eden. This theme is the main theme of the Islamists' discourse. One of the distinguishing features between Islamist and non-Islamist Muslims is that the latter would see the concept of the return to Eden as a spiritual personal quest or relegate it to the afterlife; it is in Allah's hands. Islamists on the other hand are convinced of necessity of endeavouring to achieve it in the here and now and view it as one of conditions for incurring Allah's favour in the afterlife. This also explains in part the insistence on the glory of martyrdom in Islamists' literature. It is the act of trying to recreate Eden which is of importance, even if such an undertaking is doomed to fail. This type of action is not justified by any worldly considerations such as human agreement or even human interests but is almost entirely legitimized by the Islamists' notion that this 'is required of them by Allah. Hence the notion of appeasing Islamists or agreeing on some form of peaceful co-existence is a naive notion. As I will discuss in the following chapters, it would be self-defeating on the side of Islamists to relegate their mission for worldly goals such as peaceful co-existence with non-Muslims. This is exemplified in the words of bin Laden: "as if one of the foundations of our religions is how to coexist with infidels!"⁵⁶⁸

⁵⁶⁸ Osama Bin Laden, "Moderate Islam Is a Prostration to the West," in *The Al*

In the Islamic discourse as well as in the treatment of that discourse by non-Islamic scholars, there is often some confusion between the concept of Hadith and Sunna. As stated, the Sirah is one aspect of the Sunna, the hadith forms another aspect. A last element of the Sunna is its meaning of 'custom'. The custom refers to not only to the custom of Muhammad as reported in the hadith and Sirah, but can also mean the customs of the companions, of pre-Islamic Arab legal traditions, of the countries and their practices that were absorbed into the Islamic empire and eventually it could even contain the doctrines of the foremost and respected jurists. Although it should be noted that the farther one gets removed from Muhammad and the Salaf, the weaker the influence and authority of custom becomes. Together these three elements describe the behaviour of the prophet, what he himself viewed as being an Islamic way of life. Since the Sirah is held in low esteem this term usually refers to the hadith and the consensus of those early Muslims, the Salaf. As such, from the Sunna, one can summarize those elements which make up a good Muslim and categorize actions according to a normative standard. The normative standard has two main categories:

1: *as-sunnah al-mu'kakkadah*, or that which is obligatory or forbidden due to clear, repeated examples of the prophet

2: *as-sunnah al-za'idah*, or that which commendable or lamentable due to a lack of clear examples of the prophet.

Why is this important to the study of Islamism? As we shall see, Islamism is most of all *radical* because it attempts to adhere strictly to the Quran and the example of the prophet's Sunna. There is little room for moderation, allegorical interpretation or rational based abrogation. The fact that the Shari'ah accords a value judgment on every human action based on these sources means that the Shari'ah is a totalist code for every aspect of life. If this code is seen as the *only* formula that can provide self and world salvation, and is in addition

impervious to human alteration or interpretation, then opposition or indifference to the Shari'ah becomes equal to opposing the law of nature and the law of movement. One thereby becomes an internal or external enemy.

Thus I have described the two main scriptural sources on which the Shari'ah and fiqh would eventually come to rest; the Quran and the Sunna, of which the latter consists mainly of the consensus of the early Salaf and the hadith. There are however a number of other sources of Shari'ah law which are not, at least not in the first instance, based on scripture or codifications of custom. It is important to take some notice of these since they too play a role in the formation of Islamist thought.

1.3.4 Non-scriptural sources of the Shari'ah

Besides the scriptural and other written sources we just briefly discussed, there are a number of non-written sources which aided in the formation of Shari'ah law. Since the Quran itself only holds around 500 verses with legal content, the customs of the prophet and the Salaf have of course had a tremendous impact on the formation of an Islamic body of law. However, even armed with such an extensive library of examples, statements and normative standards of the perfect Islamic way of life, which Muhammad was supposed to represent, there remained the problem that has plagued every lawgiver since the dawn of law itself. It is impossible for any written codex of laws to foresee every possible human situation which would raise questions of a legal nature. If one insists that this *is* possible then one makes the mistake totalitarian movements have made, namely, divorcing ideology from reality. For instance, neither the Quran nor the Sunna could possibly give an answer to the validity under Islamic law of hosting a server in Dubai which stores, distributes and thus infringes on the intellectual property of someone from the UK. Apart from the international dimension, is something such as 'intellectual property rights' even protected under Islamic law when neither the Quran nor the prophet ever made mention of it? Although this may

sound ludicrous, there is an example of the literalist scholar Hanbal who refused to eat watermelons since he could not find an example of the prophet eating one in the Sunna.⁵⁶⁹ Confronted with such a strict interpretation it becomes clear that those who were concerned with developing and applying the law, especially on the developing field of state administration, could not limit themselves to such literal interpretations. Schacht has noted the casuistic nature of pre-Islamic law which permeated into Islamic law.⁵⁷⁰ He observes that

for the greater part of the first century, Islamic law, in the technical meaning of the term, did not as yet exist. As had been the case in the time of the Prophet, law as such fell outside the sphere of religion, and as far as there were no religious or moral objections to specific transactions or modes of behavior, the technical aspects of law were a matter of indifference to the Muslims.⁵⁷¹

Thus a number of concepts evolved which were also elemental to the formation of Islamic legal theory.

1.3.4.1 *Ijma, the importance of consensus*

Ijma, or consensus has a different standing in Sunni and Shi'a Islam. I will start with the Sunni view. Consensus is viewed as one of the pillars of Islamic law and *usul al-fiqh*. Its importance is based on the both the Quran and the Hadith. The Quranic verse states:

And whoever acts hostilely to the Messenger after that guidance has become manifest to him, and follows other than the way of the believers, We will turn him to that to which he has (himself) turned and make him enter hell; and it is an evil resort. Quran, 4:115

⁵⁶⁹ Glasse, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopedia of Islam*, p. 441.

⁵⁷⁰ Schacht, *An Introduction to Islamic Law*, p. 6. Islamic law is highly casuistic and offers little general concepts by which to judge a certain issue.

⁵⁷¹ *Ibid.*, p. 19.

Different hadiths are also mentioned to underpin the importance of the community of believers, the ummah.

My community shall not agree on error [...] That which the Muslims consider good, Allah considers good [...] Allah is not want to make my community concur on misguidance.⁵⁷²

Right of the bat I must remark that any attempt at amending Shari'ah law, especially the laws of jihad, will eventually boil down to an effort of ijma. This is of pivotal importance for policy and law makers to understand. The required consensus is that of the learned jurists, *mujtahids*.⁵⁷³ Strictly speaking Sunni law stipulates that Ijma can only occur under four conditions: there must exist a number of mujtahids, they must all participate in the case at hand and agree, their agreement must be explicit, there can be no ijma when there are dissenting opinions i.e. ijma cannot be established by a majority.⁵⁷⁴ It stands to reason however, that the second requirement is limited to the mujtahid who can reasonably be expected to partake in the legal discussion.⁵⁷⁵ One should remind oneself that these procedural rules were developed at a time when the Islamic community was still rather small compared today's Islamic world of over 1,3 billion. Nevertheless, for the issue of counter-terrorism it remains important to understand this. Ijma offers both a way out of jihadist fiqh as it offers an obstacle against the way out. In theory a consensus against jihadist fiqh could be construed. There is a recent example in the reformulation and interpretation of a fatwa favoured by jihadist, the

⁵⁷² Ibn al-Naqīb al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, pp. 23-26.

⁵⁷³ Zubaida, *Law and Power in the Islamic World*, p. 13. Ibn al-Naqīb al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, p. 23.

⁵⁷⁴ Ibn al-Naqīb al-Misri and Keller, *Reliance of the Traveller: The Classic Manual of Islamic Sacred Law Umdat Al-Salik*, p. 23.

⁵⁷⁵ See also: Glasse, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopedia of Islam*, pp. 208-209.

Mardin fatwa, by a council of leading ulama.⁵⁷⁶ In the same sentence it should be said that this consensus is not unanimous, the jihadist ulama were not consulted and if they were they would dissent. So on the practical level *ijma* can be problematic as a guide to understanding *fiqh* and issuing *fatwa*'s.

Once *Ijma* has been reached the decision then taken becomes binding (*taqlid*) on the subsequent generations of jurists thus creating a binding tradition and in fact becoming a part of the Sunna, hence the high hurdles facing it. As such, overtime, a coherent, body of laws would emerge which would eventually lead to the establishment of certain law schools (*madhab*) and a phenomenon called 'the closure of the gates of *ijtihad*' (see for both *infra*). The adherence to the Quran, Sunna and *Ijma* is the defining hallmark of the traditionalists, *ahl al-sunna wa'l-jama'a* (the people of the Tradition and the Consensus).⁵⁷⁷ Shi'a Islam is somewhat different but I will return to that in the chapter on Khomeini.⁵⁷⁸

1.3.4.2 Qiyas

⁵⁷⁶ Talib Bin Mahfoudh, "Scholars Issue New Declaration on Ibn Taymiyah's Fatwa," *Saudi Gazette* (2010), <http://www.mardin-fatwa.com/press.php?id=1&art=31>.

⁵⁷⁷ Abrahamov, *Islamic Theology: Traditionalism and Rationalism*, pp. ix, 1.

⁵⁷⁸ In Shi'a Islam Consensus is treated differently. The Shi'a Muslims regard Ali as the only rightful successor to Muhammad, and in addition see his descendents as the true inheritors of that same title. Therefore the lineage of Ali has brought forth Imams who were the spiritual leaders of the Ummah and this therefore excluded the necessity for consensus. It was only following upon the disappearance of the twelfth imam, however, an occurrence called 'the occultation' (see *infra*), that a necessity for Consensus was created. There are two main differences between Sunni and Shi'a Islam. In the latter, it is the authority of *living* mujtahids which creates the consensus, and when the mujtahid dies, the consensus dies with him thus forcing a new generation of mujtahids to come to a consensus. Secondly; since all Shi'a believers are required to follow a particular living mujtahid, a wide divergence of legal opinions can exist, even within the same time frame, thus diminishing the value of *ijma* as compared to Sunni Islam. Zubaida, *Law and Power in the Islamic World*, pp. 13-14.

Qiyas, or analogy is used in both the Sunni and Shi'a tradition of *usul al-fiqh*, although it is of lesser importance in Shi'a Islam since its intellectual heritage goes back to the rationalists, *mu'tazilites*, and their adoption of reason. (See *infra*) When the Quran, Sunna or Ijma have no answer to a particular legal question arising out of a particular case, then analogy becomes the preferred method of legal argumentation. Analogy works basically in the same way as it does in most western civil legal cases.⁵⁷⁹ A clear example of Qiyas will be given in chapter six when it comes to the use of weapons of mass destruction and the murder of those in whose country one resides when that country is not Islamic. The arguments in defence of the murder of Dutch cineaste Theo van Gogh were construed using amongst others, Qiyas. The point being, Quranic verses and prophetic examples can be used to justify actions to which they on first sight do not pertain. Again this is also due to the casuistic nature of Islamic law and its lack of general concepts.

1.3.4.3 Taqlid versus Itjihad

The last two common elements of *usul al-fiqh* that I will discuss here are *Taqlid* or imitation, and *Ijtihad*, or interpretative effort. *Taqlid* is the opposite of *Ijtihad* in that *Taqlid* prescribes the adoption and imitation of preceding legal rulings issued by the recognized religious authorities.⁵⁸⁰ If the Quran and the Sunna did not offer a clear cut answer to a legal question, and Ijma or Qiyas offered no solution either, an answer was found in the 'effort' a learned jurist, *fuqaha* or *Mujtahidun*, could make in his interpretation of the available legal sources. Over time, the ability to make these original legal decisions would result in the formation of a school of legal thought and method which would consolidate itself in the formation of an entire legal school or *madhhab*. As legal theory developed through the centuries

⁵⁷⁹ *Ibid.*, p. 14. Zubaida here quotes from Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Us-UI Al-Fiqh*, p. 83.

⁵⁸⁰ Glasse, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopedia of Islam*, p. 451. Hallaq, *Sharia: Theory, Practice, Transformations*, pp. 111-113.

and consensus regarding legal matters grew, taqlid gained in importance; a phenomenon which we will now look at in light of the greater development of Sunni legal schools.

1.3.5 from *ijtihad* to the formation of the schools of law

As stated, Shari'ah law did not materialize overnight, nor can it be traced back, at least not in the mainstream view, to just the Quran and the Hadith. A large part of Shari'ah law is the consensus of the jurists or *mujtahidun*. The whole historical development of Shari'ah law can be termed as *fiqh*, whilst the underlying principle of how this law was formulated and developed is referred to as *usul-al-fiqh*. However, this process is largely one of retrospect. During the formative years of the Islamic empire, the Quran still had to be assembled and the hadith still had to be collected and codified. Although the first four 'rightly guided Caliphs' the *Rashidun* still had firsthand knowledge of the prophet, his revelations and examples, this of course cannot be said of all those who were delegated with political power in the subsequent growth of the early Islamic empire. Thus, in the meantime, laws had to be promulgated, effectuated and legal decisions had to be made. In the absence of a clearly outlined 'Islamic' legal body, reference was made to pre-Islamic Arab or local customary law. Zubaida comments that:

For the present, it seems probable that the early Caliphs had no systematic body of legal theory and no developed institution for legal application: they delegated their governors and generals to rule, and law was not clearly demarcated from general administration.⁵⁸¹

Under the leadership of Muhammad the original Islamic polity of Medina grew to annex the entire Arabian Peninsula. The subsequent Rashidun governed from 632-661 and conquered large parts of northern Africa, present day Iraq and parts of present day Turkey. Following the Rashidun era, the Umayyad Caliphate (7th-8th century

⁵⁸¹ Zubaida, *Law and Power in the Islamic World*, p. 17.

AD) saw the largest expansion increasing the borders of the caliphate to include Spain in the west and Pakistan in the east thereby forming one of the largest empires known to man. With an ever increasing border came also the need for an increasingly coherent system of governance, both in terms of public law as in private and criminal law. Whereas in European history this would have been the task of public legislators and jurists, in the Islamic world this was mainly a privatized matter. The Umayyad Caliphate was widely regarded as being a 'worldly' empire, religious life was therefore mainly a preoccupation of individuals rather than a state centred activity.⁵⁸² This period in Islamic history is looked on with disdain by both Sunni and Shi'a Muslims for its lack of religious purity and is derogatorily referred to as *mulk*, kingship, instead of the religiously legitimized Caliphate. The specific system of legal administration in the pre-Islamic Arab communities however, was somewhat accustomed to this lack of centralized government. Legal disputes were often settled by involving a third private party who would act as an arbiter. This same practice continued into the era of the Caliphates. Parallel thus to the expansion of the borders of the Islamic empire under the rule of the Umayyads, a pattern of legal activity started to emerge which endeavoured to integrate Islam into the legal framework. One way of doing so was to infuse Islam in the already existing practices of that time. If legal rulings were to be binding, they had to be validated by the Quran, which did not contain that many legal rulings, and more importantly by the hadith.⁵⁸³ This corpus was formed mainly during the first three centuries of Islam.⁵⁸⁴ Schacht notes: "The constant endeavour of the early jurists was to inject religious content and

⁵⁸² Ibid.

⁵⁸³ Whilst the hadith form the mainstay of the Islamic content of this new body of law, it should also be mentioned that the territories which were conquered starting from the time of the Rashidun, were home to Jews, Christians, Zoroastrians and numerous other tribes who all had their sacred laws or customs. These certainly had an influence on the coming about of the corpus of Islamic law.

⁵⁸⁴ Zubaida, *Law and Power in the Islamic World*, p. 18.

authority into the common practices developing from a mixture of scriptural and prophetic precedents and local customary conduct.”⁵⁸⁵ Ultimately this process reached its peak in the formulation that no legal ruling could be valid *unless* it was based on a binding text from the Quran or a prophetic hadith. This notion is attributed to Al-Shaybani (d. 805) Hence the process of injecting Islam into existing legal practices was completed by turning things upside down and seeing the Quran and the hadith as the basis of legitimate laws.

The earliest examples of jurists are of a surprising un-professional nature. Based on the respect they enjoyed in their communities, people would come together to discuss legal matters in an informal setting, *majlis*, plural *majalis* meaning to sit together. Over time the more authoritative figures who attended these *majalis* would attract a certain following. Those who felt particularly attracted to a certain person's discourse would keep a notebook, *sama*, of this person's discussions and legal opinions. Over time, these *sama*'s became the founding stones for entire schools of legal thought. Towards the end of the third Islamic century, jurists became a class of their own, professional elite well versed in theology and capable of giving legitimacy to legal rulings, the *fuqaha*. Concurrent with the development of the *fuqaha* as a distinct class is their cooperation with governmental structures. Cooperation with worldly powers however also bred competition and the different schools of legal thought, although they may not have been identified as strictly outlined schools as such, endeavoured to prove that their specific brand of Islamic law was the most authoritative in terms of their Quranic and hadith backing. The subsequent search for the most appropriate

⁵⁸⁵ Ibid. This is interesting, for it indicates two things: Firstly; Islamic law developed on top of a body of pre-existing laws, and secondly, this pre-existing body contained un-Islamic content, predominantly from Jewish and Christian customs. This goes against the idea of the Shari'ah as being a clear cut, readymade set of laws delivered by Muhammad to mankind. Instead, it places the formation of Shari'ah law for an important part in the hands of human endeavour.

interpretation of the canonical sources thus became the science of *usul al-fiqh*.⁵⁸⁶

The closure of the gates of Itjihad and its relevance to counter-terrorism

During the third to fourth century a phenomenon occurred which would from then on become known as ‘*the closure of the gates of itjihad*’. It is a phenomenon which has acquired new meaning in the present day debate between orthodox Islam and Islamism and to which we will return in the next part of this book. As stated, over the course of the first three centuries a class of jurists appeared on the scene that competed amongst each other for the most authoritative interpretation of the law via the injection of existing legal practices with Islamic canonical sources. Over time, some of these jurists attained such a respected position that their teachings were referred to as a certain well defined school of legal thought, or *madhab*. The four Sunni schools of legal thought were *Shafi’i*, *Hanafi*, *Hanbali* and *Mailiki*. Some of them have their own geographical area in which they

⁵⁸⁶Zubaida quotes Calder’s formulation of the evolution of *usul al-fiqh* as follows: “the formulation of rules and reflection upon them comes first and is put forward in the terminology of *ra’y*, opinion. Eventually the justification of rules is sought in preceding juristic authority, such as Malik or Abu Hanifa. At a subsequent stage, and driven by competition between schools to justify their particular rules, arises the appeal to prophetic precedent, now developed in the discipline of *’ilm al-hadith*, the compilation and verification of prophetic narrative. At this point there is a polemic of *ahlu al-hadith* against *ahlu-al ra’y*, one compounded by other intellectual and political contests between philosophers and mystics on the one side, and jurists on the other, challenging the legitimacy of opinion and speculation not fully backed by prophetic precedent. The advocates of *hadith* win, and it then becomes obligatory to justify rules and procedures by derivation from prophetic precedent. The last stage is the introduction of scriptural sanction, the articulation of the rules so far developed to texts from the Quran. ‘Chronologically the last stage, this [scriptural sanction] became, ideologically, the first principle of Islamic legal justification[.]the Quran was an influence on the law, usually secondary and intrusive.” Zubaida, *Law and Power in the Islamic World*, p. 21.

are the dominant school of law but especially now, in the information age, it has become especially the Hanbali school of law, with its emphasis on literalism which has spread across much of the Islamic world in large part due to the financing of the gulf states which adhere to this madhab. It is this phenomenon which has been closely linked to the rise of fundamentalism, revivalism and Islamism. We will get back to that later.

The closure of the gates of itjihad consists of the following phenomena. As the different schools of legal thought formed, their legal doctrines became 'fixed' and from this solidifying followed the doctrine of taqlid, which means that one is expected to follow the teachings of a certain school thus limiting the use of itjihad. In addition, the opinions of previous generations of jurists were also held to be authoritative thus even further limiting the capability of itjihad. At a certain point, there remain few legal matters which still warrant itjihad, few matters which have not yet been dealt with by previous generations within a legal school. Thus the gates of itjihad appear to have closed since most of the possible legal subject matter already has found a definitive answer. The greatest opposition to this idea of the closure of the gates of itjihad came from the Hanbali's who insisted that Itjihad was a religious obligation.⁵⁸⁷ Hallaq mentions why this closure of the gates of itjihad had a necessary ideological component. He supposes that if itjihad had remained a possibility, especially with regard to the substantive rules of the early Islamic era, itjihad might lead to the conclusion that the early Muslims held erroneous opinions and that thus, in order to preserve the ideological

⁵⁸⁷ See for an extensive description of the reasons and form of this opposition: DeLong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad*. It can be argued that DeLong-Bas paints an overly optimistic picture of the renewed itjihad of the Hanbali's. The reputation of the Hanbali's in general has been quite the opposite of striving for a larger bandwidth in interpretation and rather one of increased literalism. This is purported to be one of the reasons Al-Tabari did not include the opinions of the Hanbali school in his handbook on the various views on the fiqh of jihad. al-Tabari, *Al-Tabari's Book of Jihad, a Translation from the Original Arabic*, p. 15.

cohesiveness of Islam, *ijtihad* should not be possible in this respect.⁵⁸⁸ On the other hand, whilst on the ideological level a certain amount of cohesiveness should be maintained, in practice this was not always the case. Zubaida names ample examples of legal decisions that contravened existing practice in order to deal with new situations or with situations in which the old decision would not have been satisfactory. As with many issues in Islamic theology and law, there exist two levels of reality; one is the abstract reality of the literal canonical texts, and the other is the reality of everyday life in which the demands of the canonical sources often times take a back seat to those of human reality.

The importance of the question of *ijtihad* is the following: Orthodox Islam will maintain that *ijtihad* is restricted to the *mujtahid*, those trained and qualified in giving individual legal opinions. This stems from a period in which the masses were illiterate and could not afford to spend a lot of time researching the canonical sources and Islamic law. As such, it resembles the monopoly on interpretation long held by the Catholic Church. In so doing the class of legal experts protects its domain, assures a minimum level of quality and provides for cohesiveness within the body of Islamic law. Critics, first amongst those being the Islamists, argue that since in modern times most people can read and have had an education there can be no comparison to the earlier times in which the *mujtahid* could claim a monopoly in *ijtihad*. Thus ordinary people can decide for themselves what Islam is and isn't. This argument resembles the protestant approach to biblical exegesis. Another point of critique which will be addressed in chapter two is that the *ulama* of their day were usually paid for by the state. *Fatwa*'s could so to speak be bought and Islamic law was in the service of the often corrupt rulers. By opening the gates of *ijtihad*, by allowing the common person to study and interpret for himself, the chokehold of the *ulama* could be broken and

⁵⁸⁸ Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Us-Ul Al-Fiqh*, p. 130.

the masses could once again connect with Islam without the intermediaries of the state. However, the interpretation advocated by these people was not one of more openness and more diversity, but of a stricter literal interpretation. Whilst rejecting taqlid on the one hand they endorsed a literalist interpretation which in essence shifts the object of imitation from the ulama and the madhabs to the canonical sources. The relevance for law and policy makers in the field of counter-terrorism is the following. When one looks at the laws governing Jihad, one often hears the claim that these laws are 'misinterpreted' or that the opening of the gates of itjihad will allow for more tolerant and modern interpretations than orthodox Islam provides.

Both of these claims seem to me invalid. Firstly; as I will briefly show in the next chapter, orthodox Sunni Islam is very clear about the rules pertaining to jihad and their meaning. The same goes for their interpretation of the canonical sources that refer to this concept of jihad. The claim that these sources are misinterpreted is often times a statement reminiscent of Sam Harris's point that religious moderation is a result of secular knowledge and scriptural ignorance. Secondly; the opening of the gates of itjihad, as advocated by for instance the Salafi movement, has resulted in a more literalist and more restricted interpretation than under orthodox Islam. The idea that this opening might therefore lead to more tolerant and up to date interpretations seems to be a novelty which is yet to take shape. The opposite can be said about the Salafi interpretation which is growing tremendously as I will show in chapter three.

1.4 The public-political nature of Islamic law: Maslaha, Hisbah, takfir and fitna

A last mention that should be given to the overarching framework of Islamic law and its relation to Islamism has to do with the concepts of Maslaha, hisbah, takfir and taghut. Of these concepts only maslaha is

truly a non-scriptural source of fiqh. The other concepts are legal-political instruments and classifications which flow from different conceptions of *maslaha*. However, these other concepts illuminate some of the essential characteristics that accompany Islam's legal-political philosophy and it is prudent to expand on them here for they are at the heart of the debate between Islamist and non-Islamists Muslims conception of the Shari'ah. The principle of *Maslaha* can be translated as the public interest and is closely related to the concepts of *Istislah*, meaning to seek the public good and that of the *hisbah*, the obligation to enforce the good and forbid the wrong. *Maslaha* It is both an instrument of *usul al-fiqh* and a legal-political concept. It is not explicitly named in the canonical sources as such but is derived from it. As a basis for *usul al-fiqh*, I can be short. Shari'ah law, as any other system of codified law has the problem of not being able to give a solution to every legal problem that can occur in society. The question as to what is forbidden, disdained, recommend or obligatory will often times require extensive interpretation. This is the domain of *usul al-fiqh*. The canonical texts and the *ijma* offer a large set of ethical, religious and legal norms that can define these concepts, but in more complicated matters of the law and especially administrative and procedural law, these canonical sources may fall short. In those cases, *maslaha* can be used to come to an understanding of what the general interest is according to Islamic standards. Hallaq argues that the aim of the Shari'ah is the protection of the life, mind property and religion of the Muslims.⁵⁸⁹ As such certain rules may for instance be interpreted less restrictively, or rules may be added to the existing corpus of rules if they benefit the general public's interest. Whilst *maslaha's* use has been very restricted in orthodox Islam, especially Sunni Islam, it can be seen to play a more significant role in the 19th and 20th century. It is in this time that reformers sought to accommodate Islamic law to the demands of modern times. By arguing that Shari'ah law at its core aims to serve the well-being of Muslims *maslaha* could be used to re-interpret Shari'ah laws without

⁵⁸⁹ *Ibid.*, pp. 88-90.

losing their quintessential Islamic character. This is closely related to Tibi's earlier mentioned idea that Shari'ah law in the end is manmade. As long as one does not divert from the canonical sources that lie beneath Islamic law then the pursuit of what is best for Muslims *is* Islamic, even if this means amending existing Shari'ah laws. The two restrictions on the use of maslaha are that it cannot be used arbitrarily; they must conform to the general tenets of the Quran, Sunna and Ijma. Secondly maslaha is a sort of *ultimum remedium* when it comes to assessing the validity of public policy. This can be inferred from the fact that the concept itself is not named in the Quran or Sunna. The concept itself is inferred in those sources and thus is largely the creation of man and not of Allah, Muhammad, the Salaf or Sunna. It should therefore be used with the upmost restraint. However, even Islamists such as Khomeini have made use of it. For instance in 1988, when Khomeini applied this concept to empower the Islamic government "to bypass legal principles if necessitated by the public interest of Muslims".⁵⁹⁰ Sunni Islam however is very restrictive with regard to maslaha due to its open norm character and its more strict reliance on literal readings of the canonical sources and Islamic law than in Shi'a Islam.

Quite unlike Maslaha as a source of *usul al-fiqh*, it also has a distinct political character whose explanation lies at the heart of the Islamists confrontation with traditional Islam. The Quran describes the Mission of Islam and the role of Muslims as follows:

You are the best of the nations raised up for (the benefit of) men; you enjoin what is right and forbid the wrong and believe in Allah; and if the followers of the Book had believed it would have been better for them; of them (some) are believers and most of them are transgressors. Quran, 3:110

It stipulates that Muslims, as carriers of Islam, are the guardians of Allah's message to all mankind. In order for mankind to be free, Islam

⁵⁹⁰ Zubaida, *Law and Power in the Islamic World*, p. 16.

has to be propagated and installed into the hearts of man for the benefit, *maslaha*, of mankind. Muslims are in a way the instrument through which Allah ensures mankind's salvation. The instrument through which this salvation is to take place is described as 'Enjoining, (or *commanding*) the good and forbidding the wrong' (*Amr-bil-Marooif-wa-Nahi-anil-Munkar*). The definition of 'the good and wrong' is to be found in the Shari'ah and in the canonical sources. Maslaha therefore presumes that the imposition of Shari'ah law is for the good of mankind. This is a feature which is of course common to both religious and Gnostic speculative normative systems.

The questions which are most important for this research are first: Who is to implement *maslaha* and *hisbah*? Second; how should one treat those who do not wish to be ruled by it: should one 'force them to be free'? In Islamic legal-political thinking the concept of *maslaha* is actualized through the concept of the *hisbah*. The *hisbah* can be described as a moral, social and political concept which aims to permeate the order of being with compliance to Shari'ah law. It is traditionally aimed as a positive obligation to the caliph as the guardian of the Islamic legal, social, religious and political order. He is instructed to carry out this task for the benefit of those over which he rules. Unlike, for instance, European history, in which kingdoms were erected for their own sake and which would show religious fervour only if the times demanded it of them, Islamic caliphates were founded *because of* Islam and the Islamic community. In theory, the sole legitimation of the Caliph's authority lay in his ability to implement Shari'ah law and uphold Islam. The religious precept for 'commanding the good and forbidding the wrong' is therefore part and parcel of the Islamic state's responsibility and thus makes it incomparable to a western secular notion of statehood. However, in this traditional view it is the caliph who is responsible for upholding this commandment, not the individual Muslim. Moreover, the caliph may seek to implement Islam, but historically has never truly gone so far as to take this commandment to its most extreme logical consequences. If anything, Caliphal rule has often been marked by a

profound sense of realism, worldly considerations and careful power balancing between those interest and the demands of the religious interest groups. All of which are typical authoritarian, but not theocratic characteristics.

There are however different conceptions of *maslaha* and *hisbah* which demarcate one of the boundaries between traditional, Caliphal Islam and Islamist Islam. The questions on who is to implement these concepts and the degree to which they are willing to force men to be free are answered quite differently by Islamists. Al-Qaeda's war against Saudi-Arabia or the Egyptian Islamic jihad's assassination of Anwar Saddat for instance, cannot be understood without understanding this clash between the different conceptions of *maslaha* and *hisbah*.

Whilst in its most benign form the *hisbah* could take the shape of a Caliph appointed overseer at market places that would make sure that all dealings were fair and in accordance with private law, it could also have more far reaching consequences. The famous 13th century Sunni scholar Ibn Taymiyyah, to whom I will return shortly as he is one of the spearheads of the early Islamists movement, stated that jihad is the ultimate expression of 'commanding the good and forbidding the wrong', in line with the prophetic saying:

If one of you sees something improper, let him change it with his hand; if he cannot, then with his tongue, if he cannot, then with his tongue; if he cannot, then with his heart. That is the weakest of faith.⁵⁹¹

I already mentioned at the start of this chapter that Islamic law is an all encompassing law, outside of whose boundaries lies unbelief. Therefore the question arose as to the status of a ruler who would not uphold the commandment to enforce the good and forbid the

⁵⁹¹ Ahmad Ibn Taymiyyah, *Public Duties in Islam: The Institution of the Hisba*, trans. Muhtar Holland and Khurshid Ahmad, Islamic Economics Series (Leicester, United Kingdom: Islamic Foundation, 1982), p. 77.

wrong. If the hisbah demands that a ruler enforces the good and forbids the wrong, then the question arises as to what to think of the ruler who does not implement Shari'ah law, or even worse, opposes its implementation. This issue is a very important one. Throughout Islamic societies' history and interwoven in the canonical texts of Islam is a deep seated fear of internal unrest, infighting and chaos: *fitna*. Ibn Taymiyyah cites the prophet himself to indicate the need for patience in the face of an unjust or tyrannical ruler: "Anyone who sees in his commander something he finds reprehensible should bear it patiently". Taymiyyah comments: "Coming out in revolt against them results in injustice and corruption worse than their injustice, so it must be suffered with patience, as in many situations one must exercise patience in commanding the proper and forbidding the improper despite the tyranny of those to whom the commands and prohibitions are addressed."⁵⁹²

There are, in my view, strong Hobbesian connotations to the legal-political philosophy of Islam which explain this preoccupation with establishing order in an otherwise tribal society marred by blood feuds and warfare. The implementation of Shari'ah law has therefore always been a balancing act between 'enforcing the good and forbidding the wrong' on the one hand, and upholding peace on the other. In the most radical versions of Islamism, which takes the idea of the hisbah to its most logical extreme, two concepts emerge which bring the ummah on the verge of *fitna*: *takfir* and *taghut*, meaning respectively to deem another Muslim an unbeliever and deeming him an idolater. The category of *taghut* is usually reserved for a ruler and is used to indicate a most serious crime, namely, to use one's power to disobey Islam or to stop Shari'ah law from being implemented. Those who adhere to the idea of *maslaha* and hisbah as being individually binding thus see it as their personal mission to ensure that Islam and Islamic law is able to permeate any given society. All elements that are in opposition to this mission are deemed un-Islamic

⁵⁹² Ibid., p. 126.

and are seen as constituting an act of aggression against Islam. In order for the peace of Islam to be established, and man to be free, these enemies must be purged from within the ranks of the ummah. This concept is highly controversial within orthodox circles precisely because the outcome would be perpetual infighting and war; fitna.

Even within the circles of modern day Islamism the concept of takfir is controversial. The concept of taghut however is not. In essence it is this concept of taghut which drove the first modern day Islamists movements as I will discuss in chapters three four and six. In the Islamists vision, enforcing the good and forbidding wrong on a global scale is not merely a state obligation; it is an obligation which falls upon each Muslim. It is an act of worship which cannot be forfeited whilst still legitimately laying claim to the title of being a Muslim. Differently put, it is a concept which necessitates mass mobilization and political action. It permeates the entire order of being and is intrinsic to the call of Islam. This is of pivotal importance in understanding the totalitarian character of Islamism. Islamists, frustrated by what they see as the abandonment of the missionary and obligatory character of Islam, and antagonized by the rulers who, according to the Islamists, try to keep Islam out of the daily business of ruling a country, seek to breathe new life into this neglected or 'absent duty'.⁵⁹³ The Islamists' endeavour to actualize the principle of the hisbah in modern day Islamic societies ought to be understood as to making all Muslims guardians of, and subservient to the Shari'ah, which in the end *is* the guidebook to knowing what is good and wrong. It requires that all those who would stand in the way of Shari'ah implementation, be they ordinary Muslims or the ruler, be purged from society. Once the Islamic society itself is purified, the mission for global salvation can be exported to non-Islamic societies. In short, it seeks to fabricate what Lefort described as that form of society in which 'all activities are immediately linked to one another,

⁵⁹³ Faraj, *The Neglected Duty: The Creed of Sadat's Assassins and Islamic Resurgence in the Middle East*.

deliberately presented as modalities of a single world; that form in which a system of values predominates absolutely, that form in which, lastly, the dominant model exercises a total physical and spiritual constraint on the behavior of private individuals'. I will return to this concept it in the coming chapters on jihad and the various Islamists ideologies.

A last remark should be made with regard to the overall nature of classical Shari'ah law and human rights. A 2006 study of the Dutch *Scientific Council for Government Policy* evaluated the relationship between Shari'ah law and national law in twelve Islamic countries. Throughout the study, it becomes evident that through the influence of the colonizing powers, traditional Shari'ah law increasingly has had to compete with western legal systems. This study suggests that in this struggle between western secularized legislation and Shari'ah legislation, the standards of human rights stand to benefit from the former whilst they degrade under the latter.⁵⁹⁴ The European Court of Human Rights, in one of its landmark decisions, compared the human rights standards of classical Shari'ah law with those of the European Charter on Human Rights. (ECHR) In the case of *Refah vs. Turkey*, the Turkish constitutional court sought to outlaw the Islamist Refah party which had just won the election. The ECHR demands that a political party can *only* be outlawed if such action is prescribed by law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.⁵⁹⁵ The European Court of Human Rights thus had to evaluate whether or not Shari'ah law, which Refah intended to implement in Turkey, was of such a nature that it made the dissolution of the Refah party necessary. In other words, the court

⁵⁹⁴ Wetenschappelijke raad voor het regeringsbeleid, *Sharia En Nationaal Recht*, ed. J.M. Otto (Amsterdam: Amsterdam University press, 2006), pp. 105, 135, 226.

⁵⁹⁵ Article 11 (2) of the European Charter on Human Rights.

had to compare the standards of the ECHR with those of classical Shari'ah law. The court concluded that:

sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it. [...] It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.⁵⁹⁶

Thus, the court judged that classical Shari'ah law fails to comply with the modern standards of human rights as laid down in the ECHR. It stands to reason that an *Islamist* version of the Shari'ah would be even more incompatible with the ECHR.

1.5 Conclusion

From what we have discussed so far, we can see that the Shari'ah is not a book of laws which was part and parcel of the Quran and revealed to Muhammad in its entirety. Far from it, the Shari'ah is mainly founded on the examples of Muhammad and only in an ideological sense on the Quran. In addition, the influence of Jewish, Christian, Zoroastrian, and pre-Islamic Arab customs should not be understated. Shari'ah law furthermore appeared well after the administrative laws and legal practices set forth by the Rashidun and Umayyad Caliphates were established. Only after their establishment did a trend to 'Islamize' these laws retrospectively emerge. This is of prime importance to our understanding of Islamic law in the current debate between orthodox Islam and Islamism. Islamism posits that Shari'ah law is contained within the Quran and the hadith and

⁵⁹⁶ *Case of Refah Partisi (the Welfare Party) and Others V. Turkey*. Paragraph 123.

nowhere else. It may be enlightened by the views of certain scholars but its main tenets are already solidified within the canonical sources. Some Muslim intellectuals such as Bassam Tibi, however, maintain that Shari'ah law and fiqh in particular are the result of human labour and thus should not be sacralised. These of course are two completely opposing views. Although even the most orthodox of Sunni Muslims would maintain that the Quran and the hadith stand on top of the pyramid that is Islamic law, the history of the formation of Islamic law shows that that is merely an ideological statement with which these orthodox are certainly able to live as long as the actual practice of legal administration is allowed to abide by the demands of the specific time in which they need to operate. A most practical approach. The danger that lies in the view on Islamic law of the Islamists is that their body of legal rules is derived *only* from the Quran and the hadith in their most literal interpretation. It is an interpretative effort at purification. Whilst disregarding all matters of day to day real-life interest, the Islamists seek to immanentize what they see as the transcendent edicts of Islam. Furthermore, their particular interpretation of the commandment to enforce the good and forbid the wrong functions as the principle of action for a mass mobilizational palingenetic movement for the fabrication of an Islamic Utopian society. These two views on Islamic law are irreconcilably at odds with each other although they draw from the same sources. In fact, it could be stated that Islamism is orthodoxy deprived of its worldly impurities and drawn to its most logical conclusion.

In the next chapters we will look at the substance of Shari'ah law and of the doctrines of Jihad and the Dhimmi in particular. The doctrine of Jihad especially, is paramount to the ideology of Islamism and by viewing it in the light of orthodox Islam, which by now should begin to seem a bit moderate and practical; we can get a sense of the direction the Islamists intend to take it.

