

Islam and Just War Theory

Authors(s):

Dr. Muhammad Legenhausen [3]

Islam and Just War Theory

by Hajj Muhammad Legenhausen

The Imam Khomeini Education and Research Institute, Qom, Iran 7. Feb. 2008

In this paper, it is argued that an Islamic ethics of war and peace may be interpreted to yield a just war pacifism that is analogous to that developed on the basis of Western just war theory.

Abstract

Just war theory is said to have begun with Augustine. The doctrine was developed further as a religious teaching, but after the Reformation, secular versions of just war theory became prominent. “Just war” is contrasted with “holy war”. Since the crusades were considered by many Christians as holy wars, it is often assumed that *jihad* is the Islamic equivalent. In what follows, I argue that *jihad* shares much in common with the just war tradition.

Recent theorists have used the term “just war pacifism” or “contingent pacifism” to describe the view that under the conditions of modern warfare, just war theory leads to the conclusion that it is morally wrong to engage in war.

In this paper, it is argued that an Islamic ethics of war and peace may be interpreted to yield a just war pacifism that is analogous to that developed on the basis of Western just war theory. Under current conditions, the criteria required by Islam to provide a moral justification for just war fail to obtain for an important range of armed conflicts, and this conclusion may be considered an argument for a conditional Islamic just war pacifism.

Keywords: just war, pacifism, just war pacifism, contingent pacifism, moral theory, *jus ad bellum*, *jus in bello*.

Introduction

Nearly thirty years ago J. H. Jansen, in his book, *Militant Islam*, wrote, “the image of the Muslim armies converting as they advanced has sunk so deeply into the Western mind that no amount of repetition of the truth is likely to dislodge it.”¹

Over the course of the intervening years, if anything, the image of an advancing Muslim threat has lodged much more deeply, although it is not Muslim armies that are feared as much as terrorists. Terrorist calls to *jihad* drown out claims that Islam is a religion of peace, as issues of violence and Islam are debated in the media. In order to get a clearer picture of whether there is a moral commitment to peace in Islam, we might begin with a term that is considered by some to be nearly synonymous with terrorism, *jihad*.

The Arabic word *jihad* means struggle, exertion, or expenditure of effort. Often it has military connotations, but it would be incorrect to translate it as *holy war* or *crusade*, since even as applied to fighting, the senses of these words do not coincide with that of *jihad*.

The root letters of *jihad* are *J H D*, from which are formed a number of related words. The verb *jahada* means to struggle or strive. In the Qur’an, this verb, and the verbal noun, *jihad*, are frequently followed by the phrase *fi sabil Allah* (in the path of God). Believers are encouraged to strive with their possessions and their selves for God’s cause. One who so strives is a *mujahid*. An important related term that is not used in the Qur’an is *ijtihad*, which refers to the struggle of a scholar to determine the correct ruling on a point of religious law, the *shari’ah*.

One who has the ability to derive divine commands and prohibitions from their sources is called a *mujtahid*. Like the word struggle, *jihad* can be used with reference to fighting; however, not only do simple strivings to please God fall within the extension of *jihad*, but the Qur’an has a number of other terms that are used specifically for military endeavors and for fighting.

In order to gain a better understanding of *jihad*, we need to investigate not only the references to it in the Qur’an, but also how it was understood in pre-Islamic traditions. The Qur’an acknowledges that Islam is rooted in the Abrahamic tradition, and especially with respect to the code of war, the teachings of the Torah invite comparison with Muslim law. In chapter twenty of Deuteronomy some elements of a code of war are given:

10. When you draw near to a town to fight against it, offer it terms of peace.

11. If it accepts your terms of peace and surrenders to you, then all the people in it shall serve

you at forced labor.

12. If it does not submit to you peacefully, but makes war against you, then you shall besiege it;

13. and when the LORD your God gives it into your hand, you shall put all its males to the sword.

14. You may, however, take as your booty the women, the children, livestock, and everything else in the town, all its spoil. You may enjoy the spoil of your enemies, which the LORD your God has given you.

15. Thus you shall treat all the towns that are very far from you, which are not towns of the nations here.

16. But as for the towns of these peoples that the LORD your God is giving you as an inheritance, you must not let anything that breathes remain alive.

17. You shall annihilate them -- the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites -- just as the LORD your God has commanded,

18. so that they may not teach you to do all the abhorrent things that they do for their gods, and you thus sin against the LORD your God.

19. If you besiege a town for a long time, making war against it in order to take it, you must not destroy its trees by wielding an ax against them. Although you may take food from them, you must not cut them down. Are trees in the field human beings that they should come under siege from you?

20. You may destroy only the trees that you know do not produce food; you may cut them down for use in building siege works against the town that makes war with you, until it falls.

Here the first six verses (10–15) refer to the conduct of war outside the land of Israel. Nations outside of Israel may become tributaries of Israel, or face military engagement. The nations within Israel are to be destroyed in order to purify that land of defiling practices.

These verses have been the subject of much debate among Jewish and Christian commentators, but even without a full comparative study of Jewish *halakhah* and Islamic *fiqh*, there are important similarities between the law of the Torah, as stated above, and the doctrine of *jihad*. Both require a call to arbitration before engaging in warfare. With the exception of certain enemies (e.g. the Canaanites in Jewish law and the polytheists in Islamic law), if the enemy is willing to submit, to become tributaries of the Jewish state, or to pay the *jizya* to the Islamic state, no violence is to be done. If a city is besieged, fruit trees are to be spared by both Jewish and Muslim warriors. Captured women, children and animals are not to be slaughtered.²

This biblical code contains in an embryonic form the two essential elements of a just war doctrine. It places limitations on the initiation of combat (which medieval Christian scholars discussed under the rubric *jus ad bellum*) and on the behavior of the combatants (*jus in bello*). Prior to the initiation of armed conflict, the call of peace must be given. The Jewish law as elaborated in the *Mishnah* requires that wars to enlarge the boundaries of the Holy Land can only be fought if permitted by the Sanhedrin, the assembly. In case of invasion, on the other hand, all are obligated to fight, “even the bridegroom and the

bride,” and the declaration of war by the Sanhedrin is not necessary. As for the conduct of warfare, we have the restriction of the destruction of the orchards on which the society depended for its nourishment, and restrictions concerning violence to be done to women and children.

While the Mosaic code is not a source for Muslim law, the law revealed to Muhammad is described in the Qur’an in terms of the tradition of the law brought by Moses (and by Jesus, peace be with them):

It was We who revealed the Torah; therein was guidance and light. (5:47)

And in their footsteps, We sent Jesus the son of Mary, confirming the Torah. (5:49)

There are two reasons for keeping the Jewish rules of war in mind when considering the doctrine of *jihad*. First, the Jewish and Muslim laws are in the same tradition. Second, the Jewish law provides a point of contact between Islamic and Western thinking about war. Through this point of contact we might come to appreciate the doctrine of *jihad* as a counterpart to the Western notion of just war theory.

As already remarked, the Mosaic law contains the basic ingredients of a just war theory: restrictions on the initiation of combat, and rules for the proper conduct of warfare. However, some recent writers have contrasted the idea of just war as this was developed in medieval Christendom with the idea of a holy war to be found in the Old Testament, and *jihad* is taken to correspond to holy war.³ This is unfortunate, since holy war is taken to be typified by the Canaanite genocide (instead of taking this as exceptional), and the mistaken impression is then given that *jihad* is an unrestrained war of extermination. To make matters worse, some Muslims also have translated *jihad* – as one can see in some of the quotes given below – as *holy war*. However, *jihad* is never unrestrained extermination, and often does not even imply warfare.

The Christian concept of just war built upon the notions of war found in the Bible and on Roman law. Christian scripture, however, is sketchy at best on the topic of war, and so Christians who took up the topic of war were faced with the question, “When, if ever, it is justifiable for a Christian to engage in war?” R. H. Bainton describes three Christian responses to this question: pacifism, just war theory, and the crusade:

“The crusade differed from the just war primarily in its intensely religious quality. The just war, to be sure, was not devoid of religion, and to disregard its conditions would be to incur the displeasure of the gods, but it was fought for mundane objectives, albeit with a religious sanction, whereas the crusade was God’s war. As such it could scarcely have originated in antiquity save among the Jews.”⁴

Bainton’s distinction between the just war and the crusade has been criticized by LeRoy Walters, who has shown that the historic crusades were conceived by their participants as just wars, and defended with the same sorts of arguments.⁵ In Bainton’s work, as in much other writing on war in the West, there is an assumption that religious war is more prone to barbarity and excess than wars fought for non-religious purposes under secular authorities; in Bainton’s words, “War is more humane when God is left

out of it.”⁶ James Turner Johnson has shown how, in Western civilization, “the ideological value base for just war ideas had shifted from the religious – the church’s notion of ‘divine law’ – to a secular concept of ‘natural law.’”⁷ However, the fact that a process of secularization accompanied the development of ideas concerning the restraint of war in Europe does not imply that the crusades were unrestrained *because* they were religious.

The issue of the causes for decrease in the intensity of war is taken up by David A. Bell in his study of the wars that followed the French Revolution. According to Bell, war was relatively controlled in eighteenth century Europe largely because of the culture of aristocratic virtue. In addition, he grants that armies had become more disciplined and under centralized control, that there was an emerging balance of power among the European states, and that the religious animosities unleashed in the wars between Catholics and Protestants had ebbed. This does not mean that religious motivation necessarily leads to greater intensity in war, and that its diminution should be expected to ameliorate conflict, for the greatest intensity of war was reached only after the emergence of the secular nation states and republican ideology.⁸

If Bainton’s distinction between crusade and just war is accepted, we are sure to fail to understand *jihad*. For given this dichotomy, *jihad* will be considered a type of crusade, for several reasons. First, the crusading idea has its origins in the Old Testament, according to Bainton, and we have already pointed out similarities between the Torah and the Muslim law in this regard. Second, the *jihad* is fought for religious reasons, as is the crusade. Third, the *jihad* is initiated under religious authority, as is the crusade. Superficially then, it seems that the *jihad* is simply the Muslim version of the Christian crusade. The historical fact that the wars fought in the Middle Ages were called *crusades* by Christians and were considered to be instances of *jihad* by Muslims further bolsters this misconception.

In order to see that the identification of the crusade with the *jihad* is mistaken, it is necessary to briefly review the Christian origins of the just war idea in Augustine.⁹ Augustine’s preoccupation was with the question of whether it was ever just for a Christian to participate in war. So, he was more concerned with the issues of *jus ad bellum* than those of *jus ad bello*. In the Old Testament wars, Augustine saw that the question of whether the combat was justified was not raised because God had ordained those wars. For justification of wars without express divine sanction, Augustine turned to Roman law, which he considered to express the divine will indirectly because it was based on reason. However, without the explicit command of God, doubts must always remain as to whether a war really is justified. In the presence of such doubts, caution must be taken in the conduct of war, and so, issues of *jus in bello* come to the fore. Holy wars are then seen as absolute wars, while wars justified by natural reason must be fought with restraint.

In the Muslim (and Jewish) view, the fact that certain wars are divinely sanctioned by no means implies that they are to be fought without restraint. Indeed, the fact that a war is fought for God is all the more reason to scrupulously obey all the rules regarding the proper conduct of war. Although the wars

described in the Torah may appear relatively unrestrained when compared to the stylized forms of combat between Christians that took place in some instances in the middle ages through the eighteenth centuries, the appropriate contrast to the wars of the prophets is not medieval warfare, but the kind of war that was fought by non-Jews during the period of the Jewish prophets. It is only in this context that the significance of restraints on war in Mosaic law become clear.

Two more points of caution must be broached that indicate the difference between the *jihad* and the crusade; these concern religious purposes for war and religious authority for war. In the Christian tradition, to speak of a war fought for religious purposes is to speak of a war of conversion or a war against heresy, such as the French wars against the Huguenots. Johnson describes the great advance toward international law and against holy war made by the Dominican Francisco de Vitoria who argued that difference in religion is not a cause of just war.¹⁰ Likewise, the Muslim scholar, Shahid Mutahhari has cited the Qur'an and incidents in the life of the Prophet Muhammad (s) in order to argue that *jihad* is never to be fought solely because of religious differences.

Unfortunately, Muslims have not always interpreted the law in this way. Most notably, Ibn Khaldun (1332–1406) bluntly states that one of the purposes of *jihad* is conversion: “In the Muslim community, the holy war is a religious duty, because of the universalism of the Muslim mission and (the obligation to) convert everybody to Islam either by persuasion or by force.”¹¹ If some medieval authors described the purpose of *jihad* as to void the earth of infidels, Muslim jurists, even in medieval times, tended to view the purpose of *jihad* not as a fight for the sake of coercing conversion, but, at its most aggressive, as a struggle to expand the territory governed by the *shari'ah*.¹²

It is not mere difference in belief that underlies *jihad*, but the belief that the divine law is more just than any man made law. This may seem no consolation, but it is an important point, especially given the fact that in the contemporary world there is no consensus among Muslim scholars about what is to be understood by *shari'ah* or how Islamic law is to be applied.

The superiority of the *shari'ah* to human law was believed by Muslims to be universally evident. That the law of the Muslims is less oppressive than other law was confirmed in Muslim eyes by the fact that the Jews and Monophysite Christians of Syria preferred Muslim rule to that of the Byzantine Empire.¹³

Reason and faith were not seen as being opposed, as often happened in the Christian world, and the dictates of religion were expected to be in harmony with (enlightened) self-interest. Like Francisco de Vitoria, the Muslims sought to justify their wars by appeal to universal standards. But unlike de Vitoria, they did not feel that this required a denial of the religious justification of *jihad*.

Classical Sunni political theory divided the world into the realm of Islam, *dar al-Islam*, and the realm of infidelity, or of war, *dar al-kufr* or *dar al-harb*. The *dar al-kufr* was considered illegitimate and war was to be waged against it until it was abolished or the world should end. This view was virtually overturned by the time of the Mongol invasions of the thirteenth century. The shift took place, in part, through

successive reformulations of the definition of *dar al-Islam*, from being a territory under the governance of a rightly guided leader, to being territory in which the *shari'ah* was enforced, regardless of whether the leader was a just or unjust Muslim, to being territory in which the *shari'ah* could be applied among Muslims, even if the ruler was a non-Muslim, and finally, to being territory in which a Muslim could carry out religious obligations without persecution.

Some jurists added a realm of peace (*dar al-sulh*) to limit the *dar al-harb* only to those territories in which there was persecution or aggression against Muslims. A shift in views about the purpose of *jihad* accompanied the shift in views about the realm of Islam.¹⁴ It is questionable, in any case, to what extent *jihads* were ever carried out for missionary purposes, but by the modern era, Muslim authors deny that *jihad* is to be waged against non-believers per se, but rather against persecution and for freedom to practice and propagate Islam.¹⁵

Several Muslim writers have seen in the doctrine of *jihad* a foreshadowing of modern international law. This view is rejected by Rudolf Peters, who argues that since the laws pertaining to *jihad* apply only to Muslims, such laws are not truly international in scope.¹⁶ From the Muslim point of view, however, it is an essential feature of divine law, the *shari'ah*, that it does have universal scope. If the *shari'ah* is in accord with natural reason, it should be acceptable to all peoples.

Furthermore, Muslim law makes provisions for the limited autonomy of at least some non-Muslim communities within the framework of a wider Islamic jurisdiction. Laws pertaining to *jihad* specify the rights and responsibilities of the *dhimmi* as well as those of the Muslim. Thus, contrary to Peters, the Muslim code of *jihad* applies not only to Muslims, but to all people, although in fact it may be that only *dhimmis* and Muslims accept this code. The fact that Islamic law is not universally accepted does not detract from its international status any more than the fact that the codes established by the League of Nations were disregarded by Hitler undermines their international character.

The distinction between crusade and just war, based on whether the war is fought for purposes of conversion or suppression of heresy or fought for secular purposes does not apply to *jihad*, which was justified by reason of the rational superiority of *shari'ah* law to its rivals. Hence, Muslims typically have not distinguished religious purposes from just political purposes. This point is not lost on Peters:

“It may well be questioned whether the term ‘Holy War’ is an adequate translation of the concept of *jihad*. By ‘Holy War’ is commonly understood a war which is conducted exclusively or almost exclusively for religious reasons. Islamic law, however, does not distinguish between state and religion.”¹⁷

If religious and secular reasons are not distinguished by the Muslims of some period, it makes no sense to say the reasons they use to justify war are exclusively religious, and hence the application of the term “Holy War” to their warfare will be dubious. Like the conflation of religious aims and just political aims, the conflation of religion and state in Islam makes an analogue to the Catholic distinction between crusade and just war inappropriate for an analysis of classical Islamic thought on international relations.

The authority under which *jihad* is waged is at once both religious and political.

Historically, the unification of religious and political authority has more often than not remained an unrealized ideal. Exactly when the ideal has been realized, and what to do when it is not, are two central points of controversy within the Islamic world.¹⁸ However, the ideal of a unified Islamic state in which religious and political authority are in some way combined has never been totally abandoned. The challenge for Muslim political theory is to explore ways in which this ideal can be accommodated given the vast differences between contemporary political structures and those that existed during the period of the codification of Islamic law.

Regardless of how the *shari'ah* is reinterpreted and with its views pertaining to *jihad* and armed conflict generally, it is an error to classify the doctrine of *jihad* as a doctrine of crusade or holy war as opposed to just war.¹⁹ The diversity of Muslim views of war and peace is no less extensive than that of Christian views of these issues.

There have been Muslims as well as Christians who have seen war as an instrument for the propagation of faith. On the other hand, like Origen (185?–254?), who considered the Old Testament an allegory of the New and that the Old Testament wars must be understood by Christians in a purely spiritual sense; so too, the Ikhwan al-Safa (of 10th – 11th century Basra) felt that the military exploits of the Prophet of Islam had an exclusively spiritual significance for their contemporary co-religionists.²⁰ The dichotomy between crusade and just wars does not aid an understanding of the diversity of Christian or Muslim views, not to mention that this division is inadequate even for an understanding of war as it is discussed in the Torah.

Much of what has been argued above with respect to *jihad* could be defended in regard to the Mosaic code of war. This is not to say that just war theory is useless for an understanding of *jihad*. Many of the same moral considerations that have gone into Christian just war thinking have been taken up by Muslim jurists in their discussions of *jihad*. In what follows the key moral considerations of just war theory are used as a framework through which to view the doctrine of *jihad*. The interpretation of this doctrine is not something upon which all Muslims are in agreement, and as the discussion proceeds some of the main points of contention will be indicated.

1. Jus ad Bellum

1.1 Just Cause

As mentioned earlier, there was some controversy among Muslims as to what constitutes a just cause for engaging in *jihad*. Defense of territory is generally considered to be sufficient cause for engaging in *jihad*. Traditionally, *jihad* was understood to be justified for three reasons: to repel invasion or its threat, to punish those who had violated treaties, and to guarantee freedom for the propagation of Islam. Fighting was also permitted against rebels, but there is disagreement as to whether this sort of military

action should be considered *jihad*.

Most scholars agree that difference in religion alone is never a sufficient justification for *jihad*. However, some have argued that polytheism is a kind of *fitnah* (literally, a *trial*, commonly understood to mean *strife*) and hence, that war against polytheists is justified by such verses of the Qur'an as the following:

Fitnah is more heinous than slaying. (2:217);

and

Fight them, till there is no fitnah and the religion is God's. (2: 193; 8:39).

On the other hand the great Sunni jurist Malik ibn Anas (d. 795) held that the Ethiopians and the Turks were to be left in peace despite their polytheism because of the reported saying of the Prophet, "Leave the Ethiopians in peace as long as they leave you in peace." The Shi'ite jurist al-Hilli (d. 1278) also qualifies the command to fight the unbelievers with the condition that they must be hostile.²¹ Ibn Rushd (d. 1198) testifies to the fact that the issue of whether it is their hostility or their disbelief that justifies the killing of an enemy was a controversial issue among jurists of his day:

"Basically, however, the source of their controversy is to be found in their divergent views concerning the motive why the enemy may be slain. Those who think that this is because they are unbelieving do not make exceptions for any polytheist. Others, who are of the opinion that this motive consists in their capacity for fighting, in view of the prohibition to slay female unbelievers, do make an exception for those who are unable to fight or who are not as a rule inclined to fight, such as peasants and serfs."²²

More recently, the great Shi'ite exegete and philosopher, 'Allamah Tabataba'i has defined *fitnah* as "ascribing a partner to Allah and worshipping idols."²³ Yet immediately after this he claims that because hostility should only be directed against the oppressors, those who cease in their disbelief should not be fought. These remarks are fairly typical. Disbelief is generally seen as coextensive with oppression. This is the reverse side of the Islamic vision of the inseparability of religion and politics.

On the one hand, just political aims and Islamic aims are identified, on the other hand, the political activity of the disbelievers is identified with injustice. While polytheism and oppression may have been coextensive in Arabia at the time of the Prophet, this does not seem to warrant the general identification of the two that seems to be taken for granted by many Muslim writers. However, the fact that the jurists and commentators on the Qur'an often fail to distinguish disbelief and political injustice does not mean that they sanction *jihad* merely on grounds of difference in belief. The very possibility of mere difference of belief is often overlooked. Needless to say, there is much greater awareness of this issue among contemporary Muslim scholars.²⁴

We find a clear distinction made between disbelief and persecution or injustice together with the ruling that disbelief alone is by no means a sufficient condition for waging war among both contemporary

Shi'ite and Sunni scholars. The famous Egyptian jurist, Mahmud Shaltut (1893–1963), argues that the verses of the Qur'an that command fighting against the unbelievers do not say that the unbelievers should be fought because of their unbelief, but rather that reference to unbelievers is factually descriptive of those who had assailed the Muslim mission.²⁵

Likewise, the Iranian scholar Murtadha Mutahhari (1920–1979) distinguishes persecution from disbelief. Mutahhari distinguishes persecution from disbelief and considers persecution or oppression to be an additional requirement to disbelief for the justification of *jihad*. He goes to great length to argue that oppression is a condition needed to justify *jihad* even if this is not stated explicitly in the Qur'an. To some extent, however, he undermines his own argument by stating that polytheism in itself is a kind of oppression.²⁶

Among other recent Muslim authors, opinions regarding the justification of *jihad* range from those of the Indian modernists, who argued that combat against British imperialism could not be considered a *jihad*, to the view of the contemporary Ayatullah Ahmad Jannati, who has defended aggressive war against the unbelievers "so that they may abandon their false beliefs and incline towards Islam."²⁷

Many modern Muslim authors have attempted to defend Islam against Western charges that Islam is a violent religion by arguing that *jihad* is only justified for purposes of defense. For example, Muhammad Asad (1900–1992) who converted to Islam from Judaism and served as ambassador of Pakistan to the United Nations, argues that *jihad* is purely defensive and that Islam forbids aggression.²⁸ Mahmud Shaltut has already been mentioned as holding this position.

Likewise the Egyptian modernists Muhammad Abduh and Rashid Ridha' have interpreted those verses of the Qur'an that had been seen as unconditional commands to fight the unbelievers as conditional commands to fight those who had broken pledges, or had otherwise initiated aggression against the Muslim community.²⁹ The Indian modernists such as Ahmad Khan and Cheragh Ali have been criticized for going overboard in this direction and for condoning complacency under British rule because they claimed that there could be no *jihad* against the British, since even defensive *jihad* is restricted to defense against those who would deny the Muslims freedom of worship.

Although few Muslims would agree with the view of the Indian modernists, the view that only defensive war is permitted in Islam remains a fairly common one among Muslim apologists. However, the notion that *jihad* is restricted to defensive warfare is by no means the invention of modernism. Majid Khadduri argues that beginning with Ibn Taymiyyah (d. 1328), an important line of Sunni Muslim thought interpreted *jihad* as exclusively defensive.³⁰

Most Muslim authors of the colonial period took a more militant stance against European imperialism than did the Indians. Most notably, Jamal al-Din Asadabadi (1839–1897) and later the Muslim Brothers (*Ikhwan al-Muslimin*) of Egypt called for *jihad* against British imperialism. Hasan al-Banna claimed that since Muslim lands had been invaded, it was incumbent upon all able Muslims to repel the invader.

Since the domination of Egypt had been accomplished already by the time of Hasan al-Banna's writings, the situation was not exactly one of defense against an invasion. The invasion was over. So, al-Banna appealed to verses of the Qur'an, hadiths and the opinions of medieval jurists in order to defend the position that *jihad* is justified against all non-Muslims, Christians as well as pagans, whether they fight against the Muslims or not.³¹

Sayyid Qutb, the chief spokesman of the Egyptian Muslim Brothers after 1954, explicitly attacks those Muslim thinkers who limited *jihad* to defense. He revives the claim of those medieval jurists who argued that *jihad* is not for the sake of conversion, but to make the *shari'ah* the law of the land, and thereby to abolish oppressive political systems.³² While the position Sayyid Qutb defends is no different than that found in many medieval authors, the language he uses reflects the appeal of Marxist struggles for national liberation. He justifies *jihad* not only for defense of the Islamic state, but for attack against any oppressor.

The language of national liberation as used by communists is explicitly taken up by the influential founder of Pakistan's *Jama'at Islami*, Abul a'la Maududi. In an important address delivered in 1939, Maududi argues that the offensive-defensive distinction makes no sense as applied to thinking about *jihad*. The offensive-defensive distinction is primarily applicable to the actions of sovereign states with respect to one another. But for Maududi, *jihad* is primarily conceived of as revolution:

"Islam is a revolutionary ideology and programme which seeks to alter the social order of the whole world and rebuild it in conformity with its own tenets and ideals. 'Muslim' is the title of that International Revolutionary Party organized by Islam to carry into effect its revolutionary programme. And '*Jihad*' refers to that revolutionary struggle and utmost exertion which the Islamic Party brings into play to achieve this objective."³³

Among medieval thinkers we saw some disagreement as to whether *jihad* should be waged by the Muslim state against all unbelievers, or only against hostile unbelievers. We may expect that among twentieth century Muslims there will be disagreements over whether revolutionary activity should be taken up against all governments that are not instituted to uphold the *shari'ah*, or only against those governments which are oppressive. If conformity to the *shari'ah* is the sole criterion for determining whether the laws of a nation are just or not, no difference will be perceived between these alternatives. This is the position of Sayyid Qutb and of Maududi. Islam is hailed as the opponent of oppression, where oppression is seen as that which is not in conformity with Islam. Both Maududi and Qutb explicitly condemn forcible conversion, but they have no tolerance for any government that does not enforce the *shari'ah*.

What then is taken to constitute a just cause for the initiation of *jihad*? There is no one answer upon which all Muslims are in agreement. We may, however, list the most widely accepted answers to this question.

1. Defense
2. Revolution against tyranny
3. Establishment of the *shari'ah*.

The common reason given by some jurists that *jihad* is justified by the need to guarantee freedom to propagate Islam is usually understood as coming under (2) or (3). The punishment of treaty violators may be added as a fourth justification; however, this condition has been given hardly any attention in modern times.

The question of defense is enormously complicated. There is no agreement as to what constitutes defensive war. In the face of criticism from the West, many Muslim modernists claimed that defense was the only justification of *jihad*, and that all of the wars fought in the early days of Islam were defensive. These claims have come under attack both from Orientalists and Muslims. In response, the notion of 'defense' has been elaborated by some to include types of warfare that might not ordinarily be viewed as falling under this category. For example, Muhammad Hamidullah defines defensive war in such a way as to include the following:

- a. punitive war against the enemies of Islam
- b. sympathetic war in support of the struggle of oppressed Muslims in foreign lands
- c. punitive war against rebels within an Islamic state
- d. idealistic war fought in order to command the good and prevent the commission of evil.³⁴

None of these are normally understood as defensive. There is a difference between punitive actions and defensive actions. Defensive actions repel aggression, but punitive ones are understood as defensive only because it is imagined that they discourage attacks. An appeal to sympathetic war could be used to justify attacks for the sake of gaining territory with the excuse that some Muslims have been mistreated in the coveted lands. With (c) the danger arises that rebellions that could be quelled by police action will escalate into civil wars. Perhaps most dangerous is (d) because it would allow any action against Islamic law to be taken as a cause for launching a war.

While Shi'i and Sunni authors are largely in agreement about the condition under which *jihad* is justified, there are some important differences. According to Twelve Imami Shi'ism, the twelfth Imam went into hiding over a thousand years ago; he is still living and one day will manifest himself and lead the true believers in the establishment of peace and justice on earth. Most Shi'ite scholars hold that only defensive war is permissible in the absence of the Imam, and that aggressive *jihad* may only be waged upon his return.

There are disagreements as to what constitutes defense. Many take a wide view of defense, not much different from Hamidullah's, cited above. However, there are difficulties with this. If defense is understood to encompass anything that could provide an ethical justification of war, it is a mistake to claim that the twelfth Imam will lead a non-defensive war, for this would mean that the Imam would lead

an unjust war, which is unthinkable. If, on the other hand, defense is understood narrowly, to include only the defense of Muslim territories under attack, it must be allowed that there are some wars that for moral reasons should be waged, but that are prohibited in the absence of the Imam (e.g., revolutionary struggle against a tyrant, on some interpretations).

Many contemporary Shi'ite scholars avoid this difficulty by denying that there are types of *jihad* that may be led exclusively by an infallible Imam. Ayatullah Taleqani is quite explicit about this.³⁵ It is generally agreed that *jihad* is to be waged against injustice. During the modern period of colonialism and neo-colonialism, there is a tendency to reinterpret *jihad* in such a manner as to justify armed struggle against tyrants and colonial powers.

A fairly typical statement of this sort of view is voiced by Ayatullah Ibrahim Amini, who, as a member of the Guardian Council of the Islamic Iran has said, "The Qur'an has saddled Muslims with a heavy responsibility of fighting tyranny, corruption, exploitation and colonialism, and defending the oppressed and the exploited."³⁶ Of course, *fighting* need not be taken as military action or war, and could be interpreted in a way consistent with a more limited role for *jihad*; but the possibility for a more belligerent understanding of *jihad* and war is present.

1.2 Right Authority

It is generally agreed that no *jihad* may be waged unless it is directed by the right authority (with the exception of defensive *jihad* that is deemed to be imposed on one by necessity). The question of what is the right authority has been one of the most divisive ones in Muslim history. The ideal has been for religious and political authority to be combined, as it was during the time of the Prophet of Islam. For Sunnis, this political-religious authority was wielded by the first four caliphs after the Prophet, the *khulafa rashidun*, the rightly guided caliphs. For the Shi'ah, this authority was intended for the Imams, but except for short periods during the lives of Ali (as) and Hasan (as), political power was wrongly denied them.³⁷ Problems for both groups arose when political and religious authority became divided.³⁸

Among the Sunnis, during the Abbasid caliphate, although the caliph would exercise political power and would lead the *jihad*, the legitimacy of *jihad* and of all religious duties was to be determined by the '*ulama*'. According to the Maliki school, "The enemy may be combated under any ruler, whether he is pious or immoral."³⁹ As the power of the caliphate declined, the '*ulama*' retained responsibility for issuing the legal decrees that would designate whether combat to be led by the head of state would be considered *jihad*.

Shi'ite attitudes toward authority after the occultation of the twelfth Imam (as) in 260/874 is the subject of some dispute among scholars. Some have argued that since true authority must rest with the Imam, Twelver Shi'ism makes the legitimacy of any other ruler precarious while enhancing the political power of the '*ulama*'.⁴⁰ However, during the reign of the Safavids (1502–1779), the shahs claimed to rule as representatives of the Hidden Imam, with the appellation "Shadow of God on Earth", and most of the

'*ulama*' supported them in this claim. Furthermore, there have been strong elements within the '*ulama*' who insisted that neither the state nor the religious institution had any right to act on behalf of the Imam. This position was advanced by some who followed the Akhbari school of Shi'ite jurisprudence, which was most influential during the 17th and early 18th centuries, and was superseded by the Usuli school.

On the other hand, the '*ulama*' (regardless of school) reserved for themselves the responsibility to act on behalf of the Imam in some regards, e.g., guardianship over orphans and the administration of mosques. Various '*ulama*' have taken different positions as to how far such authority should extend. Even at the height of Safavid power, the sanction of the '*ulama*' was sought for the waging of *jihad* against the Georgians by Shah Abbas (1587–1629). In times when state power was weaker, the claims of the '*ulama*' became more strident. During the Qajar period, Shaykh Ja'far Kashif al-Ghita (d. 1823–13) claimed that the duty to defend Islam through *jihad* falls upon the *mujtahids* during the occultation. The ruler retained political authority, but religious sanction was the prerogative of the '*ulama*'. It was held that the Imam had two kinds of authority, political and religious, symbolized by the sword and the pen. In the absence of the Imam, the ruler was entitled to act on behalf of the political authority of the Imam, while the '*ulama*' held the religious deputyship.

The '*ulama*'s claim to political authority reaches its culmination with the writings of Imam Khomeini and the victory of the Islamic Revolution in Iran.⁴¹ Among contemporary *mujtahids*, there is still some difference of opinion about whether there is any authority of the twelfth Imam (as) that cannot be exercised in his absence. The most contentious aspect of this authority pertains to *jihad*.

As mentioned above, there are a number of scholars who have held that in the absence of the Imam, only defensive *jihad* is permissible, and this seems to be the dominant view, today. Arjomand's discussion of the early development of this position is worth quoting at length:

"As for the *jihad* involving actual warfare, the obligation to undertake it became narrowly circumscribed in the time of the occultation. Al-Mufid (d. 413/1022), following Kulayni, added the *dar al-iman* (the realm of faith) to the traditional dichotomy of the *dar al-Islam* (house/realm of Islam) and the *dar al-kufr* (realm of infidelity), and presented *jihad* as the (nonviolent) struggle to convert the realm of Islam to the realm of faith (i.e. Shi'ism), postponing the onslaught of the infidels. A generation later, al-Tusi (d. 460/1067) considered holy war in the absence of the Imam an error (*khata*), and over two centuries later, the Muhaqqiq al-Hilli (d. 676/1277) similarly ruled that *jihad* was not obligatory unless the believer was summoned by the Imam. Except for a passage in which *jihad* was considered "commendable" (*mustahabb*) but not obligatory on the frontier in the absence of the Imam, the possibility of holy war during the occultation was not envisaged. Therefore, the Muhaqqiq in effect limited *jihad* to defensive war."⁴²

Some Shi'ite writers even avoid using the term *jihad* for defensive war in the absence of the Imam and speak instead of "holy war of defense" (*harb difa'iyyah muqaddasah*). Such jurists restrict the term *jihad* to war initiated by the Muslims against unbelievers, the more precise technical term for which is *jihad al-*

ibtida'i. More often, however, *jihad* is understood to include both offensive and defensive warfare.

Defensive war was not forbidden because it was seen as self-evident that one should defend oneself when attacked. War was to be fought for the sake of calling upon people to respond to the invitation of Islam and to protect the people. The first purpose was associated with offensive war, and the second with defense. Offensive war was forbidden during the occultation because, as explained in Sachedina's illuminating study: "only the Imam has the necessary divine grace to avoid any error of judgment in endangering the lives of people and the goals of Islamic revelation."⁴³ According to a narration attributed to Imam Sadiq (as):

"If a person strikes people with his sword and calls them to himself, and if there is someone among Muslims who is more knowledgeable [about the Will of God] than he, then he is certainly misguided and false."⁴⁴

Imam Khomeini endorsed the traditional view that only defensive war is permitted in the absence of the Imam, and it has been observed that his emphasis that the war with Iraq was an imposed defensive war is due to this point.⁴⁵ The Islamic Revolution itself, on the other hand, was not seen as defensive or offensive *jihad* in the jurisprudential sense of *jihad*, and Imam Khomeini sought to bring about the fall of the Shah's regime through a protests and winning the allegiance of the people and the various organs of government without violence. Violence of the state against individuals was answered through individual self-defense, but Imam Khomeini did not seek to employ the military in a civil war to bring about Islamic government. Likewise, his idea of exporting the revolution was completely non-violent:

"When we say that 'we want to export the revolution', we want that this thing which has appeared, this spirituality which has emerged in Iran, to be exported. We do not use swords, guns, or attack anyone. It has been a long time that Iraq is fighting against us and we are not attacking them. They attack and we defend ourselves. Defense is a necessity."⁴⁶

"We who say that we want to export our revolution, we do not want it by sword; rather we want it done by promotion."⁴⁷

"We hope that an Islamic power would emerge, a just power, a power which would depend on justice, and not the bayonets, and not even, say, cannons and tanks, [leading to] harmony among all men."⁴⁸

Another example of what amounts to a provisional pacifism in the absence of the living Imam (as) can be found in an introductory tract by the contemporary Shi'ite missionary Sayyid Saeed Akhtar Rizvi:

"[A]ccording to Ithna-'Ashari law, a war cannot be started unless specifically authorized by the Prophet or Imam himself, and that also to the limits prescribed by the Representative of Allah. After all, life is a creation of Allah and it should not be destroyed unless it has been authorized to do so by a Representative of Allah. Accordingly, the Holy-War is forbidden for the Shi'ah Ithna 'Ashari during the period when our Imam is hidden from us.⁴⁹

Because the expectation of a Mahdi could take a quietist form as might seem to be indicated from remarks like those of Rizvi, European colonialists in the Muslim world sometimes thought that Mahdism could be exploited as a force against *jihad*. In this they were sorely mistaken. Belief in the Mahdi can become activist in several ways. First, someone might appear who claims to be the Mahdi. This happened in the Sudan at the end of the 19th century. Second, active struggle may be seen as required to prepare the way for the Mahdi's reappearance. This was a theme that was exploited by Ali Shari'ati in his efforts to gain support among the Shi'ite masses to overthrow the Shah of Iran. This revolutionary activism, as we can understand from numerous speeches of Imam Khomeini, need not be violent, and non-violent revolutionary activity may even be prescribed by the religious leadership. Third, and this is a common view among contemporary Shi'ite "*ulama*", the responsibilities of the Imam may fall upon the jurists during the absence of the Imam.

Exactly the extent to which the delegation of authority to the jurists is to be understood, is a matter of contention, especially with regard to the issue of *jihad*, although it is usually held that the initiation of violent *jihad* against unbelievers can only be valid if led by the Mahdi, the Twelfth Imam (as) after his reappearance, although non-violent revolutionary activity would not be thus limited.

1.3 Right Intention

Right intention (*niyyat*) is a fundamental condition for engaging in *jihad*.⁵⁰ The importance of *niyyat* in both Shi'i and Sunni schools cannot be overemphasized. There are numerous hadiths to the effect that fighting for the sake of conquest, booty, or honor in the eyes of one's fellows will earn one no reward. If one is to engage in *jihad*, one must have the intention of doing so for the sole purpose of drawing nigh to God. In Shi'i jurisprudence, this intention distinguishes acts of worship, *'ibadat*, from other activities discussed in works on religious law.

The importance of having the correct intention during battle is illustrated in a popular tale about the Commander of the Faithful, Imam 'Ali (as), which has been put into poetry in Rumi's *Mathnavi*. During the battle of Khandaq (5/627), the sixteen year old 'Ali engaged the leading Qurayshi warrior. At one point during the conflict, 'Ali pinned his enemy to the ground and was about to dispatch him when 'Amr spit in his face. 'Ali then left 'Amr on the ground disabled. When he returned, 'Amr asked him why he had left. 'Ali replied that if he had killed him immediately after being spat upon, the killing would have appeared to have been committed to appease his own anger, and so he had waited until he could kill 'Amr clearly for the cause of God alone.⁵¹

1.4 Proportionality

In *jus ad bellum*, the condition of proportionality is the requirement that one should only engage in war provided that the good obtained by means of war will outweigh the evil of warfare. Muslim jurists agree that in itself, fighting is evil, *fasad*, that only becomes legitimate and necessary by reason of the objective towards which it is directed: to rid the world of a greater evil. The fact that fighting in itself is an evil –

regardless of the issue of when it might be justified – is implied by the Qur’anic dictum,

“...*fitnah* is worse than slaughter...” (2:191), (2:217).

The use of the comparative implies that slaughter of itself is evil. Unlike the conditions of just cause, right authority and right intention, the condition of proportionality is not generally discussed as such in works of Islamic jurisprudence. However, the issue of proportionality is considered with respect to the conditions under which peace treaties may be adopted. According to al-Hilli, “If the general welfare requires it, it is permissible to make a peace treaty.”⁵² Note, however, that according to Hilli, it is only permissible, and not required that one act in accordance with the general welfare in this regard. Needless to say, according to al-Hilli, only the Imam has the authority to conclude a peace treaty.

Traditional jurists also held that peace treaties were permissible in case the Muslim forces were less than half of those of their foes. It became a matter of some controversy as to what kinds of conditions could be accepted in such treaties. The early Hanafite theorist Shaybani (d. 189/804) held that the Muslims may even agree to pay tribute to their enemies if they judged that this would be better for them than continuing in a war in which they were afraid of destruction.⁵³

1.5 Last Resort

Jihad may only be initiated after the enemy has been offered the triple alternative: accept Islam, pay the poll tax, or fight. The second alternative is believed to have been initially offered only to Jews and Christians; and that later Zoroastrians were also considered to be “people of the book.” However, there is some evidence that the Commander of the Faithful, Imam ‘Ali (as) was prepared to accept the poll tax from some people of unknown faith. Jurists debated whether the invitation to Islam need be given to those who had previously been invited. Also, the subject of some controversy was the question of whether groups other than those mentioned could be considered people of the book.

An interesting argument pertaining to the triple alternative is made by Hamidullah. He claims that in the Prophet’s letter to Heraclius, a fourth alternative was offered that required nothing more than that the Emperor allow his subjects freedom to accept Islam. Hamidullah further argues that since the hadiths to which traditional jurists appeal is one in which the Prophet tells the commander of a reconnaissance or punitive mission to make the triple offer to any polytheists he encounters, the triple alternative was not intended as an imperative for opening new hostilities, but as a means by which peace was to be offered to those against whom the Muslim forces were already at war.⁵⁴

1.6 Purpose to Achieve Peace

Even the most bellicose of Muslim theorists saw the aim of *jihad* as the establishment of peace. Fighting is never advocated for its own sake, but only in order to rid the world of *fitnah* by establishing a *pax Islamica* through the enforcement of the *shari’ah*.

2. Jus in Bello

2.1 Discrimination

In the earliest sources of jurisprudence, noncombatants are distinguished from warriors, and it is forbidden to harm them. In Maliki law, women and children are not to be killed, and the killing of monks and rabbis is to be avoided unless they have taken part in the fighting. Others are presumed to be combatants, with the exception of persons who have been given a promise of immunity, *aman*, which may be granted by any Muslim, male or female, of the age of reason. Hamidullah argues that noncombatants who assist an army, such as physicians, are also not to be killed.

The question is often raised in medieval texts as to what the Muslim forces are to do when the enemy shields itself behind Muslim children who have been taken captive. The jurists respond that it is permissible to shoot arrows at the enemy in such circumstances, but one should aim to avoid hitting the children. Also, although it is not permissible to kill noncombatants, if a Muslim soldier takes action necessary for the successful waging of *jihad* in which noncombatants are unintentionally killed, the soldier does not thereby do wrong; he is not required to pay blood money. In these two rulings, a principle of double effect can be seen to be in operation.⁵⁵

2.2 Proportionality

Proportionality in the *jus in bello* sense requires that the least amount of force be used that is necessary in order to obtain one's ends during combat. The opinion of al-Hilli is fairly typical:

“It is permissible to fight the enemy by any means which will lead to victory, but it is reprehensible to cut down the trees, and throw fire, or cut off the water, unless it is necessary (for victory); and it is forbidden to throw poison. Some however say that this is only reprehensible.”⁵⁶

Muslim jurists generally agreed that war is to be waged in such a way as to utilize the least bloodshed and property damage as was necessary in order to achieve victory. This principle is explicitly emphasized by such modern writers as Hamidullah and Schleifer. Restrictions on mutilation of the victims of war provide further examples of the prohibition against unnecessary violence in Islamic law. Shahid Mutahhari argues that if the destruction of property is the only means by which victory may be secured, it is permissible, but such activity may not be considered a proper part of the activity of *jihad*.⁵⁷ Here again we find an implicit use of the principle of double effect.

From this brief survey of Muslim views on some issues concerning *jihad*,⁵⁸ several points should be clear. There is no single doctrine of *jihad* that is universally accepted by Muslims. The Muslim understanding of what is required by the Qur'an and the practice of the Prophet regarding *jihad* has developed over time, and reflects the political and ideological environments in which Muslims have attempted to interpret *shari'ah*. On the other hand, this diversity of opinion does not imply that there is no

content to Islamic law, or that it is a matter of arbitrary opinion. There is no more reason to accept relativism here than with respect to any other science.

The fact that there are Muslims who would sanction violent actions against civilians in the name of *jihad* by no means implies that such terror is condoned by Islam, any more than the fact that some Christians give religious sanction to torture and massive collateral damage implies that such things accord with Christian principles. The laws of Islam pertaining to *jihad* form a doctrine of just war. The divine law of Islam restricts wars to combat against injustice and it requires that combat take as humane a form as is consistent with the achievement of its aims.

In recent years, a number of just war theorists working in the Christian tradition have suggested that in current conditions of advanced technology and political arrangements, it is not possible to fight a war that does not violate some principles of just war. This view has been dubbed “just war pacifism,” and is also known as “contingent pacifism,” “conditional pacifism,” and “practical pacifism.”⁵⁹

The arguments that have been given for this sort of position would seem to be even stronger in the context of Islamic Shi'ite theology than in the Christian just war tradition. One of the main arguments in favor of just war pacifism is that it is impossible to come to any reasonable assurance that military action will have a desirable outcome.⁶⁰ This argument also features prominently among Shi'ite theologians who have argued that offensive war is prohibited during the time of the Major Occultation because there is no infallible Imam available who is able to judge that the results of violence will justify the initiation of combat.

Offensive war was justified by Muslim jurists for the sake of making it possible for people to hear the call to Islam. In modern society, however, modern means of communication have made this reason for war obsolete. One may argue that the call to Islam is not available when the media are in the hands of those who are not sympathetic to Islam. However, the issue of bias in the media is not one to be solved by warfare. The only kinds of war that it may be plausibly argued is legitimate according to Islam in current circumstances is that of defense. Defense may be a response to direct attack, or it may be defense of a people against oppression.

In any case, in order to mount an effective defense, we need to know what measures will produce the desired results, whether a given action will repulse the enemy or cause enemy attacks to increase in their severity. In some cases, it may be reasonable to respond to an attack with a similar display of military force – reasonable in the sense that one may have justified confidence in thinking that such a display will repel the attack. In cases of asymmetric warfare, however, it is assumed that one cannot match the firepower of the enemy and that other means need to be adopted. In such cases, it will be difficult to defend the position that the *only* resort available is violence. Especially given the fact that the enemy's will to fight may be dependent to a large extent upon public opinion, in some circumstances a violent response to attacks may be counterproductive, let alone when the case is one of defending the rights of the oppressed.

Armed conflicts that are often considered to fall short of war, such as humanitarian interventions, police actions involving the use of combat troops, and some low level armed political conflicts require further study. Although such forms of combat have become pressing issues in the contemporary world, they are far from the conception of *jihad* as classically understood. As Muslims grapple with such issues, we can expect to see the emergence of a variety of legal opinions analogous to the differences of opinion to be found among other just war theorists.

The geopolitical situation of the Muslims in today's world requires a reconsideration of what sort of methods may be employed to defend against attacks and against oppression. Consideration of just war pacifism may not only recommend itself on moral grounds, given these circumstances, but it may also help strategists to seek to achieve the aims of justice, peace and security toward which religion directs us by using means that are both more effective and more consonant with the directives against unnecessary bloodshed and harm that are taught by Islam, in sha'Allah.

References

Abedi, Mehdi and Gary Legenhausen, eds., *Jihad and Shahadat: Struggle and Martyrdom in Islam*, Houston: IRIS, 1986.

Abu Sulayman, Abdul Hamid A., "Islamic Jurisprudence and Modern Needs: The Challenge of Renewal," in Said *et al* (2001), 59–72.

Akhtar, Wahid, "Review of Modern Islamic Political Thought," *Al-Tawhid*, Vol. 2, No. 4, 1985, 165–189.

Algar, Hamid, *Religion and the State in Iran: 1782–1906*, Berkeley: University of California, 1969.

Amini, Ibrahim, "Foreign Policy of an Islamic State in the Light of the Qur'an," *Al-Tawhid*, Vol. 2, No. 4, 1985.

Arjomand, Said Amir, *The Shadow of God and the Hidden Imam*, Chicago: University of Chicago Press, 1984.

Asad, Muhammad, *The Principles of State and Government in Islam*, Berkeley: University of California Press, 1961.

Bainton, Roland H., *Christian Attitudes Toward War and Peace*, New York: Abingdon Press, 1960.

al-Banna, Hasan, *Five Tracts of Hasan al-Banna (1906–1949)*, Charles Wendell, tr., Berkeley: University of California Press, 1978.

Bell, David A., *The First Total War*, Boston and New York: Houghton Mifflin, 2007.

Brown, Michael, "Is there a Jewish Way to Fight?" *Judaism*, Vol. 24, 1975, 466–475.

- Cowles, C. S., Eugene H. Merrill, Daniel L. Gard, and Tremper Longmann III, *Show Them No Mercy: 4 Views on God and Canaanite Genocide*, Grand Rapids: Zondervan, 2003.
- Crone, Patricia, *God's Rule: Government and Islam: Six Centuries of Medieval Islamic Political Thought*, New York: Columbia University Press, 2004.
- Dallmayr, Fred, *Peace Talks—Who Will Listen?* Notre Dame: University of Notre Dame Press, 2004.
- Eliash, Joseph, "Misconceptions Regarding the Juridical Status of the Iranian 'ulama'," *International Journal of Middle East Studies*, Feb. 1979.
- Enayat, Hamid, *Modern Islamic Political Thought*, Austin: University of Texas Press, 1982.
- Faridzadeh, Mehdi, ed., *Philosophies of Peace and Just War*, New York: Global Scholarly Publications, 2004.
- Fiala, Andrew, *Practical Pacifism*, New York: Algora, 2004.
- Fiala, Andrew, "Pacifism", *The Stanford Encyclopedia of Philosophy*, Summer 2007 Edition, Edward N. Zalta (ed.),
URL = <http://plato.stanford.edu/archives/sum2007/entries/pacifism> [4]
- Firestone, Reuven, *Jihad: The Origin of Holy War in Islam*, New York: Oxford University Press, 1999.
- Goodman, Lenn Evan, *The Case of the Animals versus Man Before the King of the Jinn*, Boston: Twayne, 1978.
- Hamidullah, Muhammad, *Muslim Conduct of State*, 7th ed., Lahore: Sh. Muhammad Ashraf, 1977.
- Hodgson, Marshall G. S., *The Venture of Islam*, Vol. 1, Chicago: University of Chicago Press, 1974.
- Ibn Khaldun, *The Muqaddimah*, tr. Franz Rosenthal, abridged and edited by N. J. Dawood, Princeton: Princeton University Press, 1981.
- Jafri, S. H. M., *The Origins and Early Development of Shi'a Islam*, London: Longman, 1979.
<https://www.al-islam.org/the-origins-and-early-development-of-shia-islam...> [5]jafari
- Jannati, Ayatullah Ahmad, "Defense and *Jihad* in the Qur'an," *Al-Tawhid*, Vol. 1, No. 3, 1984, 39–54.
<https://www.al-islam.org/al-tawhid/vol1-n3/defence-and-jihad-quran-ahmad...> [6]
- Jansen, G. H. *Militant Islam*, New York: Harper and Row, 1979.
- Johnson, James Turner, "Theoretical Contexts of Studies on Peace and Just War," in Faridzadeh (2004), 13–27.

- Johnson, James Turner, *Just War Tradition and the Restraint of War*, Princeton: Princeton University Press, 1981.
- Johnson, James Turner, *Ideology, Reason and the limitation of War*, Princeton: Princeton University Press, 1975.
- Keddie, Nikki R., ed., *Religion and Politics in Iran*, New Haven: Yale University Press, 1983.
- Keddie, N. R., *Scholars, Saints and Sufis*, Berkeley: University of California Press, 1972.
- Khadduri, Majid, *The Islamic Conception of Justice*, Baltimore: Johns Hopkins Press, 1984.
- Khadduri, Majid, *The Islamic Law of Nations*, Baltimore: Johns Hopkins Press, 1966.
- Khomeini, Ruhollah, *Imam Khomeini on Exportation of Revolution*, tr. Hamid Tehrani, Tehran: Institute for Compilation and Publication of the Works of Imam Khomeini, 2001.
- Kohlberg, Etan, "The Development of the Imami Shi'i Doctrine of *Jihad*," *Zeitschrift der Deutschen Morgenlandischen Gesellschaft*, 126, 1976, 64–86.
- Maududi, S. Abul a'la, *Jihad in Islam*, Lahore: Islamic Publications, 1980.
- Mutahhari, Murtadha, "*Jihad* in the Qur'an," <https://www.al-islam.org/jihad-holy-war-islam-and-its-legitimacy-quran-a...> [7] in Abedi and Legenhausen (1986), 81– 124.
- Paskins, Barrie and Michael Dockrill, *The Ethics of War*, Minneapolis: University of Minnesota Press, 1979.
- Peters, Rudolf, *Islam and Colonialism: The Doctrine of Jihad in Modern History*, the Hague: Mouton, 1979.
- Peters, Rudolf, *Jihad in Mediaeval and Modern Islam*, Leiden: E. J. Brill, 1977.
- Phillips, Robert L., *War and Justice*, Norman: University of Oklahoma Press, 1984.
- Pruthi, R. K., *Encyclopedia of Jihad*, Vol. 1, New Delhi: Anmol, 2002.
- Qutb, Sayyid, *Milestones*, Cedar Rapids: Unity Publishing Co., 1981.
- Rajaei, Farhang, *Islamic Values and World View: Khomeyni on Man the State and International Politics*, Lanham: University Press of America, 1983.
- Rawls, John, *A Theory of Justice*, Cambridge: Harvard University Press, 1971.

Rizvi, Sayyid Saeed Akhtar, *Islam*, Tehran: A Group of Muslim Brothers, 1397/1977.

<https://www.al-islam.org/islam-sayyid-akhtar-rizvi> [8]

Rose, Gregory, “*Velayat-e Faqih and the Recovery of Islamic Identity in the Thought of Ayatullah Khomeini*,” in Keddie (1983), 166–188.

Russell, Frederick H., *The Just War in the Middle Ages*, Cambridge: Cambridge University Press, 1975.

Sachedina, Abdulaziz A., *The Just Ruler in Shi'ite Islam*, New York and Oxford: Oxford University Press, 1988.

Said, Abdul Aziz, Nathan C. Funk, and Ayse S. Kadayifci, eds., *Peace and Conflict Resolution in Islam: Precept and Practice*, Washington, D.C.: University Press of America, 2001.

Schleifer, Abdullah, “*Jihad: Modernist Apologists, Modern Apologetics*,” *The Islamic Quarterly*, Vol. 28, No. 1, 1404/1984, 25–46.

Tabataba'i, Muhammad Husayn, *Al-Mizan*, vol. 3, Tehran: WOFIS, (1982).

Taleqani, Mahmud, “*Jihad and Shahadat*” in Abedi and Legenhausen (1986), 47–80.

Walters, LeRoy, “*The Just War and the Crusade: Antithesis or Analogies?*” *The Monist*, 1973, 584–594.

Williams, John Alden, ed., *Themes of Islamic Civilization*, Berkeley: University of California Press, 1982.

1. Jansen (1979), 29.

2. In Mosaic law there are, however, exceptions to the condition that women and children are to be spared. Cf. Numbers 31 and Joshua 8. Cf. Brown (1975).

3. See Cowles et al. (2003), 7.

4. Bainton (1960), 44.

5. Walters (1973), cited in Johnson (1981), xxvi. In the seminal Johnson (1975), Johnson also argues that the classical just war doctrine of Vitoria and Suarez is inseparable from the idea of the holy war. Paskins and Dockrill (1979) support Johnson's analysis, claiming that the division between holy war and just war is “artificial and misleading.” 193.

6. Bainton (1960), 45.

7. Johnson (1975); the quote is from Johnson's own description of this work in the preface of Johnson (1981), ix.

8. Bell (2007), 49–51.

9. See the discussion of Augustine's views in Russell (1975).

10. Johnson (1981), 94f. and Dallmayr (2004), 49–56. Francisco de Vitoria (c. 1485–1546) wrote against the war of the Conquistadors fought with religious justification against the native peoples of the Americas, although he did sanction the Spanish conquest on other grounds.

11. Ibn Khaldun (1981), 183.

12. Peters (1977), 183. See the discussion of the evolution of views on this issue among Sunni jurists in Crone (2004), 368–385. For the Shi'ah, jihad for missionary purposes was prohibited during the major occultation. For a modern statement of the purpose of jihad as bringing the entire world under the governance of Islamic law, see Pruthi (2002), 74.

13. Hodgson (1974), 201.

14. See Crone (2004), 359–362.
15. According to Mahmud Shaltut, “there are only three reasons for fighting, viz. to stop aggression, to protect the Mission of Islam and to defend religious freedom.” Peters (1977), 51.
16. Peters (1979), 149. For an example of the view of the doctrine of jihad as international law, see Hamidullah (1977).
17. Peters (1977), 3–4. In Peters (1979) the author argues that we are justified in speaking of jihad as *bellum justum*.
18. See Johnson (2004).
19. See Firestone (1999), 15, for a dissenting opinion. Firestone argues that jihad may be considered holy war if “holy war” is understood in the sense of any religiously justified war, and “just war” is understood as war justified by natural law. Firestone’s use of these terms has the odd consequence that Catholic just war theory would have to be taken as justifying holy war. Regardless of how the labels are to be applied, however, one should not think that jihad was viewed as an ideological war of extermination.

Also see Crone (2004), 363, who points out that jihad is certainly unlike the Greek *hieros polemos*, because jihad is not fought for the control of a sanctuary; furthermore, jihad is not fought with consecrated weapons, there is no special ritual purity for the soldiers or their camps, and no sacrifices for victory or tabernacles brought with the troops to indicate God’s presence.

20. Cf. Russell (1975), 11–12; Goodman (1978), 255–256.
21. See Williams (1982), 269.
22. Peters (1977), 17. Khadduri traces the idea that jihad can be justified solely on the grounds of religious differences to Shafi’i (d. 820), and comments on the controversy this provoked in Khadduri (1984), 165–166.
23. Tabataba’i (1982), 89.
24. For some indication of this in Sunni thought, see Abu Sulayman (2001).
25. Khadduri (1984), 48; also see 50 and 75, where it is argued that jihad is only permitted for defensive purposes.
26. Mutahhari (1986), 110–111.
27. Jannati (1984), 42.
28. Asad (1961).
29. Peters (1979), 129.
30. Khadduri (1984), 169–170. As will be seen below, the Shi’ite restriction of jihad to defensive war during the major occultation predates Ibn Taymiyyah.
31. al-Banna (1978), 142 ff.
32. Qutb (1981), 53–76. The issue of whether coercion is involved in missionary activity carried out through jihad is clearest in the case of jihad against the Arab pagans. After the conversion of the pagan Arabs to Islam, different opinions about coercion, missionary jihad, and the enforcement of the shari’ah emerged. In many cases, there was no serious interest in conversion to Islam by non-Arabs. See Crone (2004), 377–385.
33. Maududi (1980), 5.
34. Hamidullah (1977). For the injunction to “command the good and forbid evil” see the Qur’an: (3:104), (3:110), (3:114), (9:71).
35. Taleqani (1986).
36. Amini (1985), 78.
37. On the brief caliphate of Hasan (as) see Jafri (1979), 130 ff.
38. For the question of when this occurred according to Sunni thinkers, see Johnson (2004).
39. The quotation is from Ibn Abi Zayd al-Qayrawani (d. 996), in Williams (1982), 266.
40. Cf. Algar (1969) and Keddie (1972). For the challenge to the claim that in the absence of the twelfth Imam authority is held by the ‘ulama’ and for further references, see Arjomand (1984) and Eliash (1979). An interesting discussion of Shi’ite attitudes toward political authority can be found in Enayat (1982). For a review of Enayat (1982) and of the discussion it has provoked, see Akhtar (1985).
41. Cf. Rose (1983) and Rajaei (1983), 9–23.
42. Arjomand (1984), 61–62. An important study of the doctrine of jihad in Shi’ism is that of Kohlberg (1976).

43. Sachedina (1988), 111
44. Sachedina (1988), 111. Sachedina cites Tabarsi, *Ihtijaj*, 2/118; Majlisi, *Bihar*, 100/21.
45. See Rajaei (1983), 88–91.
46. Khomeini (2001), 81. From a speech given in 1980.
47. Khomeini (2001), 86. From a speech given in 1983.
48. Khomeini (2001), 43. From a speech given in 1979.
49. Rizvi (1397/1977), 68.
50. See Taleqani (1986).
51. *Mathnavi*, Bk. I, 3719ff.
52. See Williams (1982), 269.
53. Khadduri (1966), 155.
54. Hamidullah (1977) discussed in Schleifer (1404/1984), 25–46.
55. For the importance of the principle of double effect in Christian just war thinking, see Phillips (1984), 30ff. Phillips cites Aquinas for a succinct statement of the principle: “moral acts take their species according to what is intended and not according to what is beside the intention, since this is accidental” (*Summa* 2.2., q. 64, art. 7). A similar statement is to be found in the frequently cited hadiths according to which the Prophet of Islam declared that acts are judged by their intentions.
56. Williams (1982), 269.
57. See Mutahhari (1986).
58. This work is largely a revision of parts of the introduction to Abedi and Legenhausen (1986) that were written by Legenhausen.
59. See Rawls (1971), 381; Fiala (2004) and Fiala (2007).
60. Fiala (2004), 191.

Category:

General [9]

Politics & Current Affairs [10]

Miscellaneous information:

Islam and Just War Theory by Hajj Muhammad Legenhausen The Imam Khomeini Education and Research Institute, Qom, Iran 7. Feb. 2008

Source URL: <https://www.al-islam.org/articles/islam-and-just-war-theory-dr-muhammad-legenhausen>

Links

[1] <https://www.al-islam.org/user/login?destination=node/44483%23comment-form>

[2] <https://www.al-islam.org/user/register?destination=node/44483%23comment-form>

[3] <https://www.al-islam.org/person/dr-muhammad-legenhausen>

[4] <http://plato.stanford.edu/archives/sum2007/entries/pacifism>

[5] <https://www.al-islam.org/the-origins-and-early-development-of-shia-islam-sayyid->

[6] <https://www.al-islam.org/al-tawhid/vol1-n3/defence-and-jihad-quran-ahmad-jannati>

[7]

<https://www.al-islam.org/jihad-holy-war-islam-and-its-legitimacy-quran-ayatullah-murtadha-mutahhar>

[8] <https://www.al-islam.org/islam-sayyid-akhtar-rizvi>

[9] <https://www.al-islam.org/library/general-education-society>

[10] <https://www.al-islam.org/library/politics-current-affairs>