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Conceptions of War in Islamic Legal Theory and Practice

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The term *Jihad*, meaning Muslim 'holy war,' is a powerful symbol in contemporary society, signifying not only radical violence but the clash of Islamic and Western societies. The demonization and reduction of Islam in popular American culture, particularly with respect to suicide bombings and Political Islam, suggests that Islam is an inherently violent or extremist religion. A brief reading of current studies of the Qur'anic stance on war and violence, however, suggests that the Qur'an supports pragmatism and conservatism regarding the use of force. The Qur'an legitimates the use of force when it is necessary to defend the Muslim community against non-believers, but provides a detailed framework for ethical conduct in war. Islamic legal justifications for war arose in societies in which war was a practical reality; the development of Islamic just war theories occurred as a mechanism for reconciling theory and practice.

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Jihad, taken simplistically to mean Muslim 'holy war,' is a powerful symbol in contemporary society, signifying not only radical violence but the clash of Islamic and Western societies. The demonization and reduction of Islam in popular American culture, particularly with respect to suicide bombings and Political Islam, suggests that Islam is an inherently violent or extremist religion. A brief reading of current studies of the Qur'anic stance on war and violence, however, suggests that the Qur'an supports pragmatism and conservatism regarding the use of force. Given that any holy scripture can be interpreted to fit a spectrum of ethical and political viewpoints, it seems most productive to analyze the various ways in which Islamic scholars have conceptualized the Qur'anic stance on war and to place them in a broader historical context of Islamic legal theory.

Patricia Crone begins her entry "War," in the *Encyclopedia of the Qur'an*, by defining war as "a state of open, armed and often prolonged conflict between states, tribes or parties, frequently mentioned in the Qur'an."[12] The Qur'anic term used most frequently to indicate war, according to Crone, is "fighting," although the Arabic *harb*, "war," is also found.[13] Additionally, various terms denoting 'violence' are found throughout the Qur'an, including the Arabic *hams*, which encompasses "force...bravery, courage in combat...anger and rage," and implies "war-like violence."[14] There are two primary Arabic roots used in the Qur'an to mean violence; the root meaning "to wage war" is found only six times, while the roots

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[12] Patricia Crone, "War," *Encyclopedia of the Qur'an*, v. 5, ed. Jane Dammen McAuliffe, Leiden: Koninklijke Brill NV, 2006, 455.

[13] Crone 455.

[14] "Violence," *Encyclopedia of the Qur'an*, 432.

meaning "oppression" and "to fight the enemy" predominate.[15] Where violence is mentioned in the Qur'an, it is usually associated with group war. Mohammed Arkoun argues that "the Qur'an is never interested in violence in itself."[16] Although there are extensive and detailed restrictions placed on the conditions in which war is morally acceptable, Islamic jurists give very little explicit consideration to the violence entailed in war. Historically, the process of creating just war theories within Islamic jurisprudence entailed elaborating a regulatory framework of ethical procedures for the use of force, and did not question the underlying moral status of violence.

Modern pacifist and anti-war movements frequently assert the immorality of war under all conditions, rejecting categorically the notion of a 'just war.' However, judgments about the moral status of war within the framework of Islamic law begin with the assumption that the use of force is allowable if necessitated by a given situation. As a number of scholars suggest, moral justifications for war are articulated in Islamic jurisprudence almost exclusively in terms of material and theological necessity.[17] When the Qur'an describes the circumstances in which war is justified, the key distinction is most often the necessity of the war. Justification of war is also dependent on the nature of the opponent, but this distinction is framed in terms of the threat posed by the enemy, and is, essentially, another form of assessing the necessity of the war. Practical necessity—such as the need to defend against a violent aggressor—always implies an underlying spiritual necessity to protect the Islamic community from destruction.[18] The "inner dynamic" of the Qur'an "is to consider sacred, without realizing it... rituals of violence."[19] Qur'anic discourse seeks to spiritualize

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[15] Mohammed Arkoun, "Violence," *Encyclopedia of the Qur'an*, v.5, 2006, 432.

[16] Arkoun 432.

[17] Rueven Firestone, "Disparity and Resolution in the Qur'anic teachings on War: A reevaluation of a traditional problem," *Journal of Near Eastern Studies* 56.1 (1997): 1-19; Crone 456.

[18] Crone 456.

[19] Arkoun 433.

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war in the context of fighting for the preservation of God's people. War is legitimated in the Qur'an predominately for reasons of fighting non-believers or those who threaten the believer's ability to rightly and completely worship God.[20] Violence is honorable if it is practiced in the pursuit of religious struggle, but this is also the only situation in which it is legal. Claiming that the Qur'an ritualizes violence may be an overly extreme characterization, as it erroneously suggests that the Qur'an glorifies violence itself. In the Qur'an, war is both detached from its inherent violence and connected to an awareness of its potential for devastation. The Qur'an portrays war as a holy struggle when carried out according to God's law, but emphasizes using force as a last result and stipulates rules for ethical conduct should war become necessary.[21]

Scholars of Islamic law approach the study of just war theories within the Islamic legal tradition and Qur'anic exegesis from a historical perspective, attempting to understand how early jurists adapted legal sources and reconciled theory with practice. Scholars generally view the evolution of just war theories in Islamic law as a reactionary process that was influenced substantially by both politicians and jurists.[22] This seems logical, given the Qur'anic characterization of war as an act that requires interaction between Muslim and non-Muslim communities. The Qur'an does not legitimate the use of force between Muslim believers, and dictates the use of war to protect the Islamic community against outside threats. If war was conceived principally as struggle between Muslim and outsider communities, then the politician would have played a crucial role in shaping Islamic legislation about war, given his position as the primary mediator between these two polities.

Crone argues that the Qur'anic verses justifying war "are addressed to a people who were not warlike...who assumed

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[20] Crone 456.
[21] Crone 455-56.
[22] Ahmad A. Ahmad, "The Evolution of Just War Theory in Islamic Law: Texts, History, and the Purpose of 'Reading'," *American Foreign Policy Interests* 28: 107-15, 2006, 114.

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warfare to be forbidden."[23] Assigning intent to the speaker of the Qur'an seems highly speculative, as does attempting to understand the earliest Muslim community based on the verses of the Qur'an. Other scholars have attempted, more plausibly, to understand the historical conditions and events to which Qur'anic interpretation and legislation responded, particularly in the time of the Prophet and the centuries following his death. Through exegesis of the Qur'an, in conjunction with the *hadith* and Sunna, scholars have sought to establish the development of Islamic just war theories as a reaction to community practice. Islamic interpretations of the moral status of war were historically, as they are currently, dependent on perceptions of the activities of early Islamic society. Legal justification for war, based on Qur'anic interpretation, sought to reconcile the occurrence of war in pre-Islamic times and its necessity during the expansion of the Islamic community with divine revelation.[24] Contrary to Crone, many scholars suggest that Muslim societies were already accustomed to war, and sought Qur'anic justification for this existing practice. As Ahmad A. Ahmad argues, regarding the development of an Islamic just war theory: "*practice* precedes and informs *theory*...Muslim jurists had to rely on the early political practice of the leaders of the Muslim community more than they relied on the authoritative religious texts of the Qur'an and the Sunna."[25]

Thus, the mechanism for reconciling revelation and practice lay in the process of Islamic jurisprudence, which developed just war theory from what was already legitimate practice. Crone argues that Qur'anic exegetes contextualized verses regarding war "in the tradition rather than the Qur'an itself,"[26] and in this regard she seems to be in agreement with the majority of scholars. Scholars argue that one of the primary methods of reconciling Qur'anic internal contradictions about the moral status of war was to place each verse in a historical

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[23] Crone 456.
[24] Firestone; Ahmad A. Ahmad.
[25] Ahmad 114.
[26] Crone 459.

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context according to practices of the Prophet.[27] This allowed for abrogation of particular verses by placing them chronologically earlier. The verses abrogated were those that conflicted with current practice, which included verses forbidding violent conflict.[28] In a society in which war was a practical reality, Qur'anic exegesis favored verses that legitimated war. In general, the evolution of Islamic legal conceptions of the moral status of war was driven by changing needs within the Islamic community, which, most scholars argue, tended towards an increasing interest in military combat.[29] Firestone, however, argues that a linear view of the evolution of just war theories is overly narrow, and that judgments about the moral status of war have not necessarily been uniform.[30] Clearly, the interaction between theory and practice has not been strictly unidirectional; if early practice influenced theory, this theory may have shaped later practice.[31] Regardless of the exact pattern of development, it is certain that Islamic practice regarding war did not develop wholly out of legal theory, and that some practice proceeded theory.

Scholars have thoroughly articulated the evolution of interpretations of the Qur'anic stance on war, as well as the political nature of these interpretations, but analysis of linguistic or hermeneutical issues surrounding the Qur'anic terms associated with war is scant. Qur'anic verses such as, "fight in the path of God those who fight against you, but do not transgress" are taken mostly uncritically to justify physical war and the use of force, as 'fight' becomes synonymous with war.[32] The word 'fight,' although strongly suggesting the use of force, does not rule out the possibility of non-violent conflict or struggle, or even a metaphorical fight against an opponent. The term 'fight' is used about as frequently as 'strive' and the two are

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[27] Firestone 3.

[28] Firestone 7.

[29] Said Mahmoudi, "The Islamic Perception of the Use of Force in the Contemporary World," *Journal of the History of International Law* 7: 55-68, 2005, 56-7.

[30] Firestone

[31] Ahmad 114.

[32] Q 2:190.

used "virtually interchangeably."[33] Arkoun identifies "fighting" and "killing" as deriving from the same Arabic root.[34] Nevertheless, the variety of terms in the Qur'an that mean, or are associated with, violence and war suggests that war is a complex concept whose meaning is contingent upon local circumstances. Although a major component of judging the morality of war is the articulation of distinctions about particular situations, these distinctions do not fundamentally address the potential varieties of struggle. In the derivation of a legal pronouncement that war is justified from a given situation, there appears to be no assessment of the mode or type of fighting that should be employed. The term *jihad*, although frequently interpreted to mean "holy war," can refer to peaceful or violent "exertion."[35] The inclusion of the words "but do not transgress" at the end of the Qur'anic verse compelling a fight introduces ambiguity as to whether or not 'fight' means the use of violence.[36] Conversely, there are Qur'anic verses that clearly stipulate the use of violence, such as "kill them wherever you come upon them."[37] The appearance of the more explicit term, 'kill', suggests that the meaning of 'fight' might be looser or more nuanced than it is usually read.

     The linguistic ambiguity of the term 'fight' further emphasizes the potential for political and contextual interpretation of the Qur'anic position on the morality of war. Not only will each society unconsciously interpret 'fighting' in a slightly different way, but the term is flexible enough to allow a certain amount of intentional interpretation to fit the needs of a given situation. Words are always defined in a cultural context, and their meaning can change relatively easily. Reading the Qur'an through a contemporary lens can lead to a reading of the word 'fight' according to contemporary notions of war, and there is probably no method to objectively ascertain its

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[33] Firestone 1, n.1.
[34] Arkoun 432.
[35] Majid Khadduri, *War and Peace in the Law of Islam*, Baltimore: The Johns Hopkins Press, 1955, 56.
[36] Q 2:190.
[37] Q 2:191.

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meaning. Qur'anic exegetes and jurists looked to history to understand the 'correct' intention of the Qur'anic verses on war. Yet these exegetes were driven by the need to reconcile the Qur'an with political demands. The central determinants of how Muslim jurists have interpreted the Qur'anic verses on fighting are tradition and political necessity, both of which had to be reconciled with the authoritative texts in order to maintain consistency.[38]

The need to protect consistency between theory and practice was a central concern of Muslim jurists, but it did not necessarily represent an overwhelming challenge. The ambiguity of some Qur'anic passages, along with the common practice of abrogation, allowed for a certain amount of selective interpretation. Early Muslim communities, like the majority of societies, faced conflict with neighboring societies, and dealt with war as a practical reality of expansion and survival. Although the morality of war within Islamic law is a fundamentally theological issue, it is equally a political and social issue, having been shaped by the historical needs of Islamic communities interacting with other societies.

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[38] Firestone 17-18.

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