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A Critical Study of Jihad and Just War Theory

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THE FLORIDA STATE UNIVERSITY
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A CRITICAL STUDY OF *JIHAD* AND JUST WAR THEORY

By

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Introduction

Questions surrounding *Jihad* often lead to the discussion of its justification. Is it justified? How is it justified? What are the aspects that make up *Jihad*? How is it framed within the Qur'an? These questions will be answered throughout this thesis, as well as others one might pose about justifications.

The first section deals with the primary source, the Qur'an. First, verses discussing the need for *Jihad*, as well as the actual command itself will be highlighted with discussion from the commentators both past and present. The verses used include 2:190-191, 193, 216; 3:125-126, 142, 146, 157, 195; 4:74, 75, 89-91; 5:33, 36; 8:12, 39; 9:5, 29, 73, 123; and 22:19-24, 39-41, 58. For all of these, a translation alone is provided. I frame the various interpretations in the form of discussion of the text with the end goal of relating them to present *Jihad*.

Having provided the primary source for fighting, the next section entitled Establishing Islam in Arabia traces the roots of early *Jihad* and why it was important for the establishment of Islam within that sector of the world. There is a lot of mention within the commentaries of the Battle of Badr, so a brief history is explained. Also, a lot of Islam is based off of the teachings and actions of Muhammad, so that historical background is dually deemed significant. Thus, that portion of history will be discussed with relation to the action of *Jihad*.

The next section takes aspects of *Jihad* from different areas and time periods, ranging from academic commentators to the *Tafsirs*. There is a portion that discusses present day ideology of *Jihad* from a Wahhabist perspective. This is to show the

differentiations that the weight behind the term holds. Since Just War Theory is framed in prerequisites and justifications with categories, the *Jihad* will also be framed in similar categories.

After *Jihad* has been further explained and divided into categories, the paper will turn to look at the categories of Just War Theory in the section entitled Just War and *Jihad*. It is important to understand some of the pitfalls of Just War Theory so that will be included. The primary focus of this section is to make the comparison between the two and see how their criterion line up, if at all.

The conclusion will tie up the discussions throughout the paper and provide the findings from the comparison.

I. The Primary Source for *Jihad*

The following section will highlight certain ayahs in the Qur'an that directly reference *Jihad*.¹ A brief explanation and interpretation of each ayah will be provided. For the purpose of this paper, a working definition and discussion of the term *Jihad* will be provided. No real conclusions will be drawn from these ayahs, but they are to support the overall argument of the rest of the paper and will be used as a reference for the rest of the sections.

A Working Definition of Jihad

Jihad is the struggle for each believer to engage in the path of God. These struggles can be with the heart (mind) or with the sword. According to the prophet Muhammad, the types are violent and non-violent. Muhammad explains that “the greater *Jihad* is the more difficult and more important struggle against one's ego, selfishness, greed, and evil.”² The other aspect of *Jihad* is the obligation to defend Islam from aggression and persecution by necessary means.

The Commentators

Ismail ibn Kathir (1301-1373) was a Muslim historian and commentator on the Qur'an. He was born in *Mijdal*, a village due east of Damascus. Ibn Kathir received many positions to interpret Islamic Law and notably served as a professor at the Great Mosque of Damascus. As a master scholar of history, he wrote commentaries linking the *Hadiths* to the Qur'an.

¹ For the purposes of this paper, the version of the Qur'an that will be used is cited below:
Abdullah Yusuf Ali, *Roman Transliteration of the Holy Qur'an with Arabic Text* (Lahore, Pakistan: Sh. Muhammad Ashraf, 1979)

² John L. Esposito, *What everyone needs to know about Islam* (New York: Oxford University Press, 2002), p. 117

‘Abd Allah ibn Abbas (618-687) was a cousin of the prophet Muhammad. He was one of the first commentators of the Qur’an, as well as an established authority on Islamic Sunnah. He was one of the closest friends to Muhammad and thus wrote about his life and teachings from experience.

‘Ali b. Ahmad al-Wahidi (d. 1076) was the author of the *Asbab Al-Nuzul*, a compilation of commentaries on the Quran. According to altafsir.com, he aimed to collect and systemize information behind the revelations. There is not much written on his life.

Jalal al-Din al-Mahalli (1389-1459) is known as a specialist in diverse Islamic disciplines, especially principles of Islamic law. In his *tafsir*, *Tafsir al-Jalalayn*, he provides commentary on the Qur’an starting in *Surah* 18. His works were later completed by his students.

Rueven Firestone (1952-Present) is a Rabbi and a professor of Medieval Judaism and Islam at Hebrew Union College. He is also the co-director of the Center for Muslim-Jewish Engagement.

Rudolph Peters (1977-Present) is a professor of Islamic Law at Amsterdam University. He has dedicated his writing to modern Islam and Islamic Law. His most notable books include Jihad in Classical and Modern Islam as well as Sharia Criminal Law in Northern Nigeria.

Surah II

2.190-191

“Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors. And slay them wherever ye catch them, and turn them out from where they have turned you out; for Persecution is worse than slaughter; but fight them not at the Sacred Mosque, unless they (first) fight you there; but if they fight you, slay them. Such is the reward of those who reject faith.”

Immediately the defensive nature of *Jihad* is prevalent. The ayah makes it very clear that it is preferable to fight rather than to be persecuted. This type of persecution can come in the form of religious intolerance as well as the suppression of beliefs. The ayah however does not make any insinuation to a physical attack by the opposition. In his 2010 article entitled “The Deeper Implications of Muslims Targeting Innocent Civilians,” Imam Zaid explains that this ayah is aimed at protecting non-combatants from attacks. The Imam places a great weight on the sanctity of an innocent human life.³ This however has not been known to be true for many Muslim rulers.

According to the *Tafsir* of Al-Wahidi, this verse is revealed at the point when Muhammad is going to make the “lesser pilgrimage” and has just signed a treaty with the Quraysh. Muhammad is apprehensive to go however because he does not trust the treaty. These ayahs are in place to instruct the people to defend Islam (as well as themselves) and fight if that proves necessary, even in the time of the sacred months.⁴ “For if their

³ Zaid, I. *The deeper implications of muslims targeting innocent civilians*. (New Islamic Directions, 2010. Retrieved from <http://www.newislamicdirections.com>)

⁴ Al-Wahidi, 'I. A. *Asbab al-nuzul In Al-Tafsir*. Trans. & Ed. M. Guezzou. (Institute for Islamic Thought, Amman, Jordan. 2010. Retrieved from <http://www.altafsir.com/Tafasir>), 2:190

sacred protection is violated and fighting becomes lawful for them, then they are allowed to meet the same hostility by the same means by way of retaliation.”⁵

The last part of the ayah, “Such is the reward of those who reject faith,” takes on a very strong and directive tone. It serves as a form of justification for the Muslims to wage this war on their perceived persecutors by affirming that Allah will punish those who reject Islam. What is also interesting is the use of the word “faith.” That is to say that the term “faith” in this translation of the Qur’an will now serve as faith in Allah and no other god.

What is clear from this ayah is that there is an implication to fight the non-believers. It is clear that the spread of Islam should not be suppressed. However, it is also clear that the Muslim people ought not become transgressors and attack non-combatants.

2.193

“And fight them on until there is no more Persecution and the religion becomes Allah’s. But if they cease, let there be no hostility except to those who practice oppression.”

This ayah is pretty clear in its intent. It instructs the followers of the Qur’an to make the religion of Allah the religion of the world. It does provide a mercy-rule for those who are willing to conform to the beliefs of Islam. Reuven Firestone cites this ayah in the abrogation of the aforementioned ayah 2:191. Firestone explains how this is

⁵ Peters, R. *Jihad in classical and modern islam*. (Princeton, New Jersey: Markus Wiener Publishers 2010), p. 74

interpreted to mean all unbelievers, non-combatants and combatants. Firestone explains that “this view, of course, was a logical response of those who were uninclined to liberalize the ancient taboo against fighting in the Sacred Precinct, even in the name of Islam.”⁶

It is interesting to note that war will not end until the Muslims are content in their safety. Peters believes that these sentiments will occur only after the end of the persecution of Muslims. Then the fighting must cease.⁷

The ayah also focuses on the concept of *jahiliyya*, which is interpreted as the time when the people became heedless to God’s word. It implies a certain immorality of the people because they were following the ways of the Qur’an and were consequently ignorant. The ayah is concerned with a return to the time of *jahiliyya*, which was prior to Muhammad’s revelations. Firestone defines it as “temptation, idolatry [and] sedition.”⁸

2.216

“Fighting is prescribed upon you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah knoweth, and ye know not.”

From the first part of this ayah, it is evident that perhaps all Muslims were not looking to conform to the fighting that had been outlined. Ibn Kathir explains that “Allah made it obligatory for the Muslims to fight in *Jihad* against the evil of the enemy who

⁶ Firestone, R. *Jihad, the origin of holy war in islam*. (Oxford University Press, USA. 2001), p. 60

⁷ Peters, *op cit*, 74-5

⁸ *Ibid*, 174

transgresses against Islam.”⁹ Ibn Kathir makes the distinction that while every Muslim is required to participate, it does not mean by the sword. Participation can come in the form of physical aid, mental aid or any other kind of support.

This ayah, however, sets up the question of the extent of participation and opens the debate about the requirement to fight. The question becomes whether the requirement to fight is prescribed on every male who must go out to war (*fard ‘ayn*)¹⁰ or whether or not this requirement can be ignored because there are enough people to go out and fight (*fard kifaya*)¹¹. Firestone examines many commentaries on this issue and comes to the conclusion that it is clear that the “obligation is to fight is *fard kifaya* unless an emergency requires that all able-bodied males bear arms.”¹²

Ibn Kathir goes on to make the distinction that one who died, but chose not to fight, nor considered it, will die “a death of *Jahiliyyah*.”¹³ *Jahiliyyah*, as a reminder, is translated as the pre-Islamic era of ignorance and disbelief in God. It is often used to describe the pre-Quran era.¹⁴ This is to serve as a warning from Allah to the people that Allah commands in the best interest of the people, and in the case of taking up arms with an enemy, the people are to trust the word of Allah and display the immense faith that is mentioned throughout the Qur’an.

Surah III

3:125-126

⁹ Ibn Kathir. *Tafsir Ibn Kathir*. (Retrieved from <http://www.altafsir.com/Tafsir>), 2:216

¹⁰ Firestone, *opt cit*, 60

¹¹ *Ibid*

¹² *Ibid*, (In reference to Ibn al-Jawzi, Nahhas, Ibn Kathir (Tafsir), Tabari)

¹³ Ibn Kathir, *opt cit*, 2:216

¹⁴ Islam-Dictionary.com search for term *Jahiliyyah*

“Yea,-- If ye remain firm, and act aright, even if the enemy should rush here on you in hot haste, your Lord would help you with five thousand angels clearly marked. Allah made it but a message of hope for you, and an assurance to your hearts: (In any case) there is no victory except from Allah, the Exalted, the Wise:”

In his *Tafsir* on this ayah, Ibn Kathir discusses two separate opinions about this ayah. The focus becomes the intent and extent of assistance that the angels provided (and furthermore will provide). The first source Ibn Kathir sights, Al-‘Awfi via Ibn ‘Abbas, explains that the angels who are to respond will do so instantaneously, or before their anger shall subside.¹⁵ According to Ibn Kathir’s second source, this ayah relates to the battle at Uhud. Uhud is where Muhammad and his Islamic forces met the Meccan forces in 625 A.D. The Muslim forces had to retreat due to mass casualties and being grossly outnumbered.¹⁶ The commentary explains that the angels did not appear in this situation because rather than being instantaneous, their actions are conditional in the eyes of Allah. In this case, Allah disapproved of the retreat at Uhud and therefore did not provide Muhammad’s army with the assistance of the angels.¹⁷

Regarding the second portion of this excerpt, **“Allah made it but a message of hope for you, and an assurance to your hearts: (In any case) there is no victory except from Allah, the Exalted, the Wise”** it makes reference to the definition of victory. It is noted that victory is not accomplished until the will of Allah is

¹⁵ Ibn Kathir, *op cit*, 3:125

¹⁶ Information gathered via al-islam.org/history

¹⁷ Ibn Kathir, *op cit*, 3:125

accomplished. The fighting knows no end until it is religiously declared. The following ayah serves as the culmination of Allah's commandment to perform *Jihad* and to fight.¹⁸

A classical Sunni *tafsir* of the Qur'an, written by Jalal ad-Din al-Mahalli and then later completed by his student Jalal ad-Din as-Suyuti provides another aspect of clarification for this ayah. The combination and completion of the work received the name *Tafsir al-Jalalayn*. The *tafsir* further explains that there is no reason to fear anything when engaging in *Jihad*. The size of the army does not matter for "Victory comes only from God, the Mighty, the Wise, He gives it to whomever He will, and [victory comes] not because of a large army."¹⁹ This culmination of the ayahs serve as an affirmation of confidence to fight the wars as instructed, never to give up, and to rely on Allah for help only when help is necessary.

3:142

“Did ye think that ye would enter Heaven without Allah testing those of you who fought hard (in His cause) and remained steadfast?”

This is one of the ayahs from which the concept of achieving paradise after self-sacrifice comes. According to al-Jalalayn, this concept of Allah testing believers is not to be taken literally. The terminology of testing the Muslim army in the eyes of Allah should be translated as the fact that Allah is all knowing and that this entrance to paradise is through the knowledge that is “manifested outwardly.”²⁰ What this means is that the people are to fight in the way of Allah, without question or concern for their life.

¹⁸ *Ibid*, 3:126

¹⁹ Al-Jalalayn. *Tafsir al-Jalalayn*. Trans. & Ed. F. Hamza. Royal Aal al-Bayt Institute for Islamic Thought, (Amman, Jordan. 2012, Retrieved from www.altafsir.com/Tafsir) 3:126

²⁰ *Ibid*, 3:142

Hardship is something that will be physically prevalent but plays no role in entering paradise. The only way to enter or be admitted to paradise is through the knowledge and allowance of Allah. This ultimately comes from the quest for *Jihad* and the willingness to participate. This is all coupled with an intense patience that needs to be displayed by the Muslim warrior or man.²¹ Keep this ayah and explanation in mind when discussing the next ayah.

3:146

“How many of the Prophets fought (in Allah’s way), and with them (Fought) large bands of godly men? But they never lost heart if they met with disaster in Allah’s way, nor did they weaken (in will) nor give in. And Allah loves those who are firm and steadfast.”

This ayah explains the importance of patience for the Muslim man. It is made evident in this ayah that Muslims will experience hardships, just like the “Prophets” that have come before the reader. They were met with “disaster.” Ibn Kathir examines three separate explanations of the “disaster.” First, sighting Ar-Rabi’ bin Anas, he explains that the statement “Nor did they weaken” refers to the death of Muhammad. While Ibn’ Abbas does not necessarily disagree with this, he offers the interpretation that this part of the ayah more reflects on the fact that the soldiers did not shy away from the religion.²² It is apparent that this is to act as a reminder to Muslims that when engaged in *Jihad*, physical or spiritual, it is for Allah, and like their predecessors, they too are to not

²¹ Ibn Kathir, *op cit*, 3:142

²² *Ibid*, 3:146

distance themselves from Islam. That is where the last part of the ayah will come in. Finally, Ibn Kathir sites As-Suddi and Ibn Zayd saying that the particular part of the ayah is to be taken quite literally. According to this explanation, “nor did they weaken (in will) nor give in” refers to the fact that they fought till the end of the battle and did not let up until it was over. Thus, there was no need for retreat due to the strong resolve of the aforementioned soldiers.²³

The last part of this ayah, **“And Allah loves those who are firm and steadfast,”** serves as an affirmation to the soldier, whose duty is charged and their work does not go unnoticed. *Tafsir al-Jalalayn* explains that “God loves the patient, during trials, meaning that he will reward them.”²⁴ This reward can come in many forms, but according to Peters, this reward for a *shahid* (martyr) is the direct entrance to paradise.²⁵ Peters explains that when a war was to be fought against unbelievers, religious texts would circulate “extolling the merits of fighting a *Jihad* and vividly describing the reward waiting in the hereafter for those slain during the fighting.”²⁶

In summation, this ayah correlates to the ideas behind reward for Islam and the doctrine of *Jihad*. It provides perceived reason and expectation for the post-engagement of the Muslim warrior in *Jihad*.

3:157

“And if ye are slain, or die, in the way of Allah, forgiveness and mercy from Allah are far better than all they could amass:”

²³ Ibn Kathir, *op cit*, 3:146

²⁴ al-Jalalayn, *op cit*, 3:146

²⁵ Peters, *op cit*, 5

²⁶ *Ibid*

This serves as an extension of the previous ayah mentioned (3:146) with regard to reward but it takes on a different tone. It can be inferred that the statement “**better than all they could amass**” is a reference to everyday pleasures. This ayah takes emphasis off of those everyday pleasures and places it on the importance of forgiveness from Allah. It thus implies a fairly negative tone about humanity and that the best way to achieve forgiveness is through becoming a *Shahid*. This shows that the concept of reward is heavily emphasized in Islam and *Jihad*.

Sayyid Qutb explains that there is reward for every little thing. He explains that “every little feeling is rewarded, be it thirst, hunger or mere stress and tiredness... When a believer goes out on a *Jihad* campaign, he is included among those who do good... By God this is a rich reward indeed. It is a reward by God whose generosity is beyond any limit.”²⁷ This thought fits directly into the previous ayahs in this section of the Surah.

3:195

“And their Lord hath accepted of them, and answered them: ‘Never will I suffer to be lost the work of any of you, be he male or female: ye are members, one of another: those who have left their homes, and were driven out therefrom, and suffered harm in my cause, and fought and were slain, - verily, I will blot out from them their iniquities, and admit them into Gardens with rivers flowing beneath;-- a reward from Allah and from Allah is the best of rewards”

²⁷ Bergesen, A. J. *The sayyid qutb reader: Selected writings on politics, religion and society*. (New York, NY: Taylor & Francis Group, 2008), p. 39

This ayah makes mention of both men and women, including women in the overall plight and journey for reward. Ibn Kathir sites a dialogue within the Hadith between Allah and his soldiers. When they mention the fact that women are not included in the laws of *Hijra* (migration), Allah explains that he will never allow their work to be lost.²⁸ It is inferred that this is another direct reference to reward, but this time it makes the effort and statement to include women. This ayah “refers to the highest rank there is, that one fights in the cause of Allah and dies in the process.”²⁹ Ibn Kathir explains that Allah will provide forgiveness for evil deeds and admit them into Paradise.³⁰

Surah IV

4:74

“Let those fight in the cause of Allah who sell the life of this world for the hereafter.

**To him who fighteth in the cause of Allah,-- whether he is slain or gets victory,--
soon shall we give him a reward of great (value)”**

While discussed in a different Surah this ayah makes the concept of reward even more clear. It serves as the constant reminder to the people that Allah controls all and the reward for fighting in his name is more than anything that could be perceived as tangible such as land acquisition, booty or spoils, and any other tangible consequence that is a product of war and moreover, conquest.

Ibn Kathir explains that this mention of great reward is not excluding the notion of paradise because that is a constant. But it is in fact the reward to return safely and with

²⁸ Ibn Kathir, *op cit*, 3:195

²⁹ *Ibid*

³⁰ *Ibid*

whatever spoils the soldier chooses to take home. In his *tafsir*, Ibn Kathir explains that God has guaranteed the Mujahid, or one that engages in *Jihad*, that “in his cause, that he will either bring death to him, admitting into Paradise; or, He will help him return safely to his home with whatever reward he gained.”³¹

4:75

“And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (And oppressed)? – Men, women, and children, whose cry is: ‘Our Lord! Rescue us from this town, whose people are oppressors; and raise us from Thee one who will protect; and raise us from Thee one who will help!’”

Firestone explains that this is the additional incentive for reassuring those who did not want to fight for the cause of Allah. Firestone furthers that the passage relates to the followers of Muhammad who chose to remain in Mecca after the Hijra.³² These people continued to be persecuted by the non-believers in Mecca. Thus this passage serves as a reminder that the Muslims will continue to be persecuted and it is the responsibility of the community to stand up and fight regardless of how hesitant it might be. Firestone furthers that this verse adds more support to the idea that many community members chose not to follow the commandment to fight at various times. He explains that this will later set up the Qur’an to respond “to the problem of disunity over the issue of warring.”³³ This view is corroborated in the *Tafsirs* of earlier Muslim scholars.

4:89-91

³¹ *Ibid*, 4:74

³² Firestone, *op cit*, 80

³³ *Ibid*

“They desire that you should disbelieve as they have disbelieved, so that you might be (all) alike; therefore take not from among them friends until they fly (their homes) in Allah’s way; but if they turn back, then seize them and kill them wherever you find them, and take not from among them a friend or a helper. Except those who reach a people between whom and you there is an alliance, or who come to you, their hearts shrinking from fighting you or fighting their own people; and if Allah had pleased, He would have given them power over you, so that they should have certainly fought you; therefore if they withdraw from you and do not fight you and offer you peace, then Allah has not given you a way against them. You will find others who desire that they should be safe from you and secure from their own people; as often as they are sent back to the mischief they get thrown into it headlong; therefore if they do not withdraw from you, and (do not) offer you peace and restrain their hands, then seize them and kill them wherever you find them; and against these We have given you a clear authority against them.”

Ibn Kathir offers a separate interpretation to these ayahs that further explain their intent. He explains that the other tribes or sects that the Muslims are to face are ones that will try and convert them to other beliefs, and shy away from the path of Islam.³⁴ In this section of his *tafsir*, there is a lot of emphasis placed on the word *Awliya*, or “friend of Allah.” It is intriguing that the use of this word is generally intended to describe the saint-like quality of any Muslim man with his connection to God, and yet in this case, it refers to unbelievers and ultimately the subjects of *Jihad*. It also heeds the very important warning to refrain from attempting to convert them into believers, unless it is

³⁴ Ibn Kathir, *op cit*, 4:89

by their own way and desire. Ibn Kathir offers the discourse that the believers are disagreeing over their perceived “hypocrites.” He offers a story from Imam Ahmad in the words of Zayad bin Thabit that the Muslims marched toward Uhud. In their journey, some of the group decided to go back to Medina, and the group became divided. Recorded in a Hadith, Ibn Abbas made it clear that those who decided to turn back were the ones who were not “Companions of Muhammad.” They were in fact imposters who were trying to stay alive, but they were still idolaters at heart.³⁵

This wording creates certain skepticism within Islam. Returning to the word *Awliya'* it is clear that this Hadith is telling the people not to even take the chance of trying to bring back one that is a perceived “hypocrite.” The aforementioned story is in direct reference to the section of the ayah translated as **“but if they turn back, then seize them and kill them wherever you find them.”** There is no mercy and no room for error. This “friend” is also described as one who longs and wishes that the Muslims will become disbelievers like them; an equality in unbelief. The only way to rectify the situation would be if the non-believers were to “outwardly manifest belief.” If this of course does not happen, then the order is to slay them as they come and not to associate with them even on the lowest level.³⁶ Tafsir al-Jalalayn further explains that if there are those who seek refuge and wish to establish a covenant, “a pledge of security for them and for whoever attaches himself to them.”³⁷ This statement is purposely placed to closely follow the order to destroy the unbelievers. The mentioned tafsir further explains that this ayah is abrogated by the sword ayah (Q: 9:5).³⁸ The underlying notion of this

³⁵ *Ibid*

³⁶ al-Jalalayn, *op cit*, 4:89

³⁷ *Ibid*, 4:90

³⁸ *Ibid*

ayah however is that if they do not choose to submit to God, then they are not to be taken captive and offered any more time to live, but they are to be executed immediately.

Ibn Kathir offers a slight variation of explanation for this section of the ayah. He explains that there is the chance that the unbelievers are not actually against the notion of Islam. Thus, they would revert to peace. If this were to be the case, then the Muslim soldiers do not have the right to kill them, “such as Al-`Abbas, who accompanied the idolaters in the battle of Badr, for they joined the battle with great hesitation. This is why the Prophet commanded that Al-`Abbas not be killed, but only captured.”³⁹

The last part of this ayah mentions “mischief.” This mischief is a reference to *fitna*. As-Suddi explains that this described *fitna* is actually in reference to *shirk*, or the time of the idolaters and idolatry itself. The tafsir furthers that “the ayah was revealed about a group from Makkah who used to go to the Prophet in Al-Madinah pretending to be Muslims. However, when they went back to Quraysh, they reverted to worshipping idols. They wanted to be at peace with both sides. Allah commanded they should be fought against, unless they withdraw from combat and resort to peace.”⁴⁰ The tafsir continues to explain that this led to the divine declaration by Allah, that if they are not to seek peace and display complacent behavior, as well as refrain from fighting, then it is the duty of the Muslim soldiers to capture them and kill them wherever they are found. This is the clear warrant that is described in the last part of the Ayah- **“We have given you a clear authority against them.”**

³⁹Ibn Kathir, *op cit*, 4:90

⁴⁰*Ibid*, 4:91

Surah V

5:33

“The punishment of those who wage war against Allah and his messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land; that is their disgrace in this world, and a heavy punishment in theirs in the hereafter.”

In this first reference to punishment options, the Qur’an outlines the base of punishments. First the term **“wage war”** in the Qur’an is not to be taken literally. It means those who “oppose and contradict, and it includes disbelief, blocking roads and spreading fear in the fairways.”⁴¹ Al-Hassan Al-Basri explains that the Ayah decrees that those who repent before they are apprehended cannot be punished. This Ayah extends to Muslims, and not just the nonbelievers. “He will still be liable for punishment for the crimes he committed.”⁴² Thus if an idolater were to be caught stealing or murdering, but repented for being an idolater and converted to Islam, that perpetrator would still be held responsible for his or her criminal actions. Punishment would be carried out according to the parameters of this Ayah.⁴³

The first mentioned punishment is execution, whether that is by stoning, drowning or fire. Crucifixion, a more public display of the body pre and post execution, often including the nailing of a human being to a cross, stake or tree. Crucifixion is still a recognized punishment in certain areas of the historically Muslim regions. Article 195 of

⁴¹ Ibn Kathir, *op cit*, 5:33

⁴² *Ibid*

⁴³ *Ibid*

the Iranian Criminal Code states that crucifixion is a viable option of punishment for a *mohareb* (criminal perpetrator) and should occur as follows:

- a) Method of tying does not kill him/her
- b) He/she should not remain crucified for more than three days, but if he/she dies within three days, then he/she can be taken down [from the cross]
- c) If he/she remains alive after three days [he/she] should not be killed
- d) Amputation of right hand and left leg will be by the same method as it is for “punishment of theft”⁴⁴

With regard to punishment by cutting off the hands and feet from opposite sides, the aforementioned punishment for crucifixion sheds some light on the process for punishing a thief. Referencing point “d)” from above, the Iranian Criminal Code explains that this too is still a matter of punishment. Abu Nasr Ahmad ibn ‘Ubayd Allah al-Makhladi through the *tafsir* of Al-Wahidi, *Asbab al-nuzul* tells the story of a group of people from ‘Ukal and ‘Uraynah who went to see the Messenger of Allah.

They said: ‘O Messenger of Allah, we were never people of agriculture, and before we settled around Medina we used to be people who looked after cattle’. The Messenger of Allah, Allah bless him and give him peace, ordered that they be given a flock of camels, a shepherd and commanded them to set off with them, with a dispensation to drink their milk and urine. When they reached the region of al-Harrah, they killed the shepherd

⁴⁴ Islamic Consultative Assembly, Law Affairs Committee, *Iran’s Islamic criminal law* (Retrieved from Iranian Law Network website: www.iran-law.com/IMG/pdf/iran_criminal_code_in_English.pdf, 1990)

of the Messenger of Allah, Allah bless him and give him peace, and took off with the camels. The Messenger of Allah, Allah bless him and give him peace, sent after them and when they were captured and brought to him, he cut off their hands and feet and gouged their eyes. They were left in this state in Medina until they died. Said Qatadah: ‘It was mentioned to us that this ayah was revealed about them (The only reward of those who make war upon Allah and His messenger and strive after corruption in the land...).’⁴⁵

This case outlines a thief’s actions not only against Islam but against Allah. The punishment is thereby explained and acted upon. For the case of any transgressor against Allah who steals, this story serves as a means to guide for said rebuke. The details of this story are also corroborated in the *tafsir* of Ibn Kathir.⁴⁶

The final matter of punishment mentioned is banishment, which is consistent throughout the writings referencing *Jihad*. This discussion of banishment was an additional option for the story mentioned above by both Al-Wahidi and Ibn Kathir. Tafsir al-Jalalayn furthers that “with banishment there are similar punishments, such as imprisonment and the like). That, mentioned requital, is a degradation, a humiliation, for them in this world; and in the Hereafter theirs will be a great chastisement...”⁴⁷

These are the punishments that Allah has ordered for those who choose not to acknowledge Him.

5:36

⁴⁵ Al-Wahidi, *op cit*, 5:33

⁴⁶ Ibn Kathir, *op cit*, 5:33

⁴⁷ Al-Jalalayn, *op cit*, 5:33

“As those who reject Faith,-- if they had everything on earth, and twice repeated, to give as ransom for the Chastisement of the Day of Judgment, it would never be accepted of them. Theirs would be a grievous Chastisement.”

This ayah offers a scenario in which one who is supposed to be chastised for punishment offers a form of ransom or payment to not receive the punishment. The ayah explains at the end that not only is this an unacceptable action, but it is one that is worth a more “painful chastisement.”⁴⁸ “Rather, there is no escaping the torment, and he will not be able to evade or save himself from it.”⁴⁹

Ibn Kathir explains that this will be a “lasting torment” where the perpetrators will not be able to escape the pain and severity of this. Flames will lift them to the upper parts of hell and the angels will strike them down further into the depths of punishment. No amount of ransom shall be accepted from the disbelievers on the Day of Judgment. No questions.⁵⁰

Why is this Ayah an important aspect of *Jihad*? As mentioned before in the explanation of Q5:33 these punishments are to be used in times of war against nonbelievers. They act as additional guidelines for how to treat the nonbelievers during the struggle that *Jihad* is. These guidelines are supposed to be acted upon by the followers, and that no kind of mercy can be shown. Bribery is rendered useless and there is this further instruction to be unpitying.

Surah VIII

⁴⁸ *Ibid*, 5:36

⁴⁹ Ibn Kathir, *op cit*, 5:36

⁵⁰ *Ibid*

8:12

“Remember thy Lord inspired the angels (with the message): ‘I am with you: give firmness to the believers: I will instill terror in the hearts of unbelievers: smite ye above their necks and smite all their finger-tips off them.’”

This Ayah is a continuation and an extension of what Islam has mandated for nonbelievers. Allah instills this constant fear to them through various mediums. In this case, this is a “hidden favor” that Allah has done for his followers. Allah reveals the angels and sends them as a support for Muhammad, the Muslims and those who believe. This is the **“firmness to the believers.”**⁵¹ In congruence with angels being sent, Allah will “cast fear, disgrace and humiliation over those who defied [His] command and denied [His] Messenger.”⁵²

The Ayah continues to explain the method that the Muslims should use to execute the nonbelievers by stating **“smite ye above their necks and smite all their finger-tips off them.”** Ibn Kathir furthers that this command is in recognition of Allah’s assistance to overcome the struggle (*Jihad*). The *tafsir* explains according to Ar-Rabi’ bin Anas, , “In the aftermath of Badr, the people used to recognize whomever the angels killed from those whom they killed, by the wounds over their necks, fingers and toes, because those parts had a mark as if they were branded by fire.”⁵³ This gave an assurance of commitment by Allah and his angels, and acted as further encouragement to pursue *Dar al-Islam* (a world of perfect Islam) through means of *Jihad*.

8:39

⁵¹ *Ibid*, 8:12

⁵² *Ibid*

⁵³ *Ibid*

“And fight them on until there is no more persecution, and religion becomes Allah’s in its entirety but if the cease, verily Allah doth see all that they do.”

Ibn ‘Abbas explains that this ayah is in reference to the battle of Badr, and is a further reiteration of the realm of Islam as well as the actions that Allah is capable of, and will do. Ibn ‘Abbas says that the **“them”** referenced in the above Ayah is referencing the disbelievers of Mecca, the idolaters and soldiers against Muhammad. This cessation mentioned is a cessation of beliefs and actions that are against Allah. Thus, it is made known that Allah sees the actions of nonbelievers who stop their ways.⁵⁴

Ibn Kathir explains this as an order to fight and eradicate *shirk*.⁵⁵ He explains that the term **“persecution”** is actually *fitnah*.⁵⁶ Ibn Kathir holds the opinions of the following: Ibn ‘Umar holds that this *fitnah* refer to Muhammad fighting against the idolaters. The fact that the people were forced to reside with the idolaters was a trial in religion (*fitnah*). It was not just a fight for Muhammad to gain leadership, but ultimately that is what he did. Ad-Dahhak offered that Ibn ‘Abbas said that this Ayah simply instructs to fight until there is no more *shirk*.⁵⁷ Other scholars (in this *tafsir*)⁵⁸ mentioned that the use of *fitnah* here is representative of when no Muslim is persecuted so that he abandons his religion.

⁵⁴ Ibn ‘Abbas, *opt cit*, 8:39

⁵⁵ According to **Islamic-dictionary.com** the term *shirk* means “Associating false gods with the One, True God, or adding partners in worship with Allah (God). This is a form of Kufur (disbelief in the religion of God), and any person who does this is not a Muslim. A person who commits shirk is a mushrik (polytheist).”

⁵⁶ According to **Islamic-dictionary.com** the term *fitnah* refers to rivalry, trials or tribulation for Muslims.

⁵⁷ This is corroborated by Abu Al-‘Aliyah, Mujahid, Al-Hasan, Qatadah, Ar-Rabi` bin Anas, As-Suddi, Muqatil bin Hayyan and Zayd bin Aslam

⁵⁸ Muhammad bin Ishaq said that he was informed from Az-Zuhri, from `Urwah bin Az-Zubayr and other scholars

This ayah ties in well to **Q2:193**, which was mentioned in an earlier part of this section. Firestone explains **Q2:193** as the cessation of *jahiliyya*.⁵⁹ This ayah is equally as concerned with that as its predecessor. The main difference between the two is that the earlier one states that **“if they cease, let there be no hostility”**⁶⁰ This Ayah simply states that Allah sees. This is open for interpretation. For the positive, Allah may see that these idolaters have realized their ways and seek repentance, and He shall grant it. The downside is that the section of the Ayah could very well be interpreted as Allah sees and does not forget. Thus punishment may still be administered. There is no order to cease hostilities. Thus, this Ayah leaves much up to interpretation for the Islamic Law interpreters. The question then becomes does that part of the Ayah abrogate **Q2:193**? The answer is- not necessarily.

Surah IX

9:5

“But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and pay Zakat then open the way for them: for Allah is Oft-Forgiving, Most Merciful”

This ayah is often referred to as “the sword verse” and is written in reference to those who break treaties. It also abrogates all previous mentions for Muslims to be peaceful. Firestone brings to light that this should be viewed in four parts.⁶¹

1) The meaning of “Sacred Months”

⁵⁹ Firestone, *op cit*, 60

⁶⁰ Qur’an, 2:193

⁶¹ Firestone, *op cit*, 62

- 2) Whether or not unbelieving prisoners must be killed
- 3) Why only three of the five pillars of Islam may be construed from this verse
- 4) The purpose of fighting

It is important to decipher which sacred months this ayah is referencing. If ascribed to a later time period it could create an issue for abrogation. Ibn Kathir and Tabari discuss the differences of opinion with regard to the Sacred Months. “The question centers on whether these sacred months are the four honored in the pre-Islamic period, or whether they represent a special period of nonbelligerency established by Muhammad with the Declaration of Dissociation, after which all prior pacts with idolaters would be broken and fighting would commence against all non-Muslims.”⁶² This constitutes one majority.

The second majority, whose view is more widely held, says that these sacred months are the four that were stipulated in **Q9:2**⁶³ and states:

Go ye, then for four months, (as ye will) throughout the land, but know yet that ye cannot frustrate Allah...

Ibn Kathir explains that these four months act as a grace period. Ibn Kathir holds in the words of Allah that “Upon the end of the four months during which We prohibited you from fighting the idolaters, and which is the grace period We gave them, then fight and kill the idolaters wherever you may find them...”⁶⁴ Firestone notes that during this period, all old pacts between Muslims and idolaters would be honored as a limited

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ Ibn Kathir, *op cit*, 9:5

grandfather clause. After those four months, any other arrangements not made in that period would not be honored and “idolaters would be one of belligerency as defined by 9:5.”⁶⁵ Thus the verse abrogates the pre-Islamic tradition of sacred months during which all fighting was prohibited.

Ibn Kathir explains this ayah further in that it instructs the Muslims to become preeminent. “**Lie in wait for them..**” establishes that the Muslims should ambush. Ibn Kathir furthers that the Muslim warriors should “seek and besiege them (the opponents/nonbelievers) in their areas and forts, gather intelligence about them in the various roads and fairways so that what is made wide looks ever smaller to them. This way, they will have no choice, but to die or embrace Islam.”⁶⁶ This choice of death or embracing Islam is corroborated in *Tafsir al-Jalalayn*.

The next major part of this verse discusses those who repent. The discussion however is not just based on repentance, but on the fact that repentance is not just verbal and emotional. It includes, according to the verse, repentance, establishing regular prayer and paying Zakat. When mentioning repentance, it comes in the wake of battle.

“According to the exegetes, the purpose of fighting in this verse is to bring people to witness God’s unity”⁶⁷ and cause them to repent. If this does not happen, then the verse orders the Muslims to kill them at the end of the four months. Ibn Kathir explains that God has mentioned some of the most important aspects of Islam in this verse. *Zakat*⁶⁸ is

⁶⁵ Firestone, *op cit*, 62

⁶⁶ Ibn Kathir, *op cit*, 9:5

⁶⁷ Firestone, *op cit*, 62

⁶⁸ According to Islamic-dictionary.com Zakat is an obligatory Islamic tax that is 2.5% of the annual (yearly) sum of all the money a Muslim owns. It goes to charity.

a clear way that Muslims can reciprocate the favors that Allah has done for them, and is representative of a covenant of belief.

To conclude, as mentioned before, this verse orders Muslims to kill, in connection with a particular context. “Ad-Dahhak bin Muzahim said, ‘It abrogated every agreement of peace between the Prophet and any idolater, every treaty, and every term.’ Al-`Awfi said that Ibn `Abbas commented: ‘No idolater had any more treaty or promise of safety ever since Surah Bara'ah⁶⁹ was revealed. The four months, in addition to, all peace treaties conducted before Bara'ah was revealed and announced had ended by the tenth of the month of Rabi` Al-Akhir.’”⁷⁰ There is a *Hadith* that states in the words of Muhammad that he was commanded to fight the people until they renounced their beliefs and accepted Islam and Allah as the one God.⁷¹ Thus it becomes clearer that this verse abrogates earlier verses about fighting and the order for the war that results from *Jihad* is expressly given to the people.

9:29

“Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the Religion of Truth, from among the People of the Book, until they pay the Jizya with willing submission and feel themselves subdued.”

Al-Jalalayn explains that this ayah is to be taken literally. The nonbelievers that are referenced here are namely the Jews and the Christians, but the same rebuke that is to

⁶⁹ The 9th Chapter in the Qur'an

⁷⁰ Ibn Kathir, *op cit*, 9:5

⁷¹ Firestone, *op cit*, 63

be given to them is to be given to any nonbeliever. These people are to be fought immediately, not delegated to a lower warrior, because they are not “submissive and compliant to the authority of Islam.”⁷² Ibn Kathir provides further background to the timing of this declaration. He explains that this original declaration occurred during a time of intense heat and drought, and that the people were in despair. Muhammad was organizing to fight the Romans on a journey to Ash-Sham⁷³ but his people were weak. Allah said that these people had not yet paid the *Jizyah*⁷⁴ and they need to do so in order to fully embrace Islam.⁷⁵

This ayah is cited by Nahhas as abrogating virtually all verses calling for patience or forgiveness toward people of the scriptures (Jews and Christians mainly) if they do not pay *Jizyah*.⁷⁶ If the non-Muslims decide that they would like to be included in the protection that Islam offers, then there are certain things that need to be accomplished. Ibn Kathir provides the story of ‘Umar bin Al-Khattab⁷⁷ during his acceptance of the religion. The story is written in the form of a list of things that ‘Umar did to follow the laws of Islam while still not maintaining the actual identity of a Muslim. It says that he did everything from agreeing not to erect crucifixes, to wearing the traditional Muslim garb. Ibn Kathir provides a more extensive list of all that ‘Umar did. The point is that he did everything in the way of Allah and admitted that “If we break any

⁷² Al-Jalalayn, *op cit*, 9:29

⁷³ Present day Damascus area

⁷⁴ Poll tax

⁷⁵ Ibn Kathir, *op cit*, 9:29

⁷⁶ Firestone, *op cit*, 64

⁷⁷ According to the American-Israeli Cooperative Enterprise, sighting *Saudi Aramco World* (January-February 2002), ‘Umar was a Caliph and a friend of Muhammad. “When Muhammad first declares his message of Islam, Umar believed that Islam was heretical rhetoric against the Quriash and his ancestors, and he resolved to kill Muhammad. He was stopped on his way to Muhammad’s house, however with news of his sister’s conversion to Islam. Umar was initially angered by the news, but after reading some of the Qur’an he was instantly changed. Rather than killing Muhammad, he determined to accept Islam.

of these promises that we set for your benefit against ourselves, then our Dhimmah (promise of protection) is broken and you are allowed to do with us what you are allowed of people of defiance and rebellion.”⁷⁸ This is the closest to a true believer that we have seen thus far. It is more so the actions that make someone favorable in the eyes of Allah than it is their words.

9:73

“O Prophet! Strive hard against the Unbelievers and the Hypocrites, and be firm against them. Their abode is Hell, -an evil refuge indeed.”

Ibn Mas’ud explains that Allah put this statement in place as a command to Muhammad “to fight the disbelievers with the sword, to strive against the hypocrites with the tongue, and annulled lenient treatment of them.”⁷⁹ This is to be taken quite literally because its intent is harsh. Ad-Dahhak continues that this is the order to perform *Jihad*.⁸⁰ Ibn Kathir summarizes the following views in his *tafsir* to say that “Allah causes punishment of the disbelievers and hypocrites with all of these methods (aforementioned) in various conditions and situations, and Allah knows best.”⁸¹

This ayah is important to the overall development of this paper because it outlines the clear command of *Jihad* that Allah gives down to Muhammad. It serves as a firmly guided reminder to the Muslims that they have a duty to fulfill and that there are penalties for those who do not want to conform. It also has the potential to serve as yet another reminder to Muslims that if they so choose to not follow in the ways of

⁷⁸ Ibn Kathir, *op cit*, 9:29

⁷⁹ *Ibid*, 9:73

⁸⁰ *Ibid*

⁸¹ *Ibid*

Muhammad and Islam, then hell is imminent for them. Hell in Islam, according to al-Jalalayn is the end to a life that is characterized as an evil journey.⁸²

9:123

“O ye who believe! Fight the Unbelievers who are near to you and let them find harshness in you: and know that Allah is with those who fear Him.”

According to Ibn Kathir, this ayah is the order for *Jihad* against the disbelievers; first the closest ones, and then the farthest (geographically speaking). This is why, he explains, that Muhammad started his fight with the nonbelievers in the Arabian Peninsula. Only after these fights were over, and Muhammad was in control of Mecca, Medina, Yemen and other Arab provinces, was it time to fight the people of the Scriptures.⁸³ The *tafsir* that Ibn Kathir is explaining all of this in continues on with the battle history and expansion.

The ayah further commands for the Muslims to let their opponents find harshness in them. Ibn Kathir furthers that this is a commandment from Allah to be relentless. He explains in the words of Allah that “the complete believer is he who is kind to his believing brother, and harsh with his disbelieving enemy.”⁸⁴ This language is present and prevalent in many other ayahs throughout the Qur’an.

Surah XXII

⁸² Al-Jalalayn, *op cit*, 9:73

⁸³ Ibn Kathir, *op cit*, 9:123

⁸⁴ *Ibid*

22:19-24

“These are two adversaries who have disputed over their Lord. But those who disbelieved will have cut out for them garments of fire. Poured upon their heads will be scalding water, By which is melted that within their bellies and [their] skins. And for [striking] them are maces of iron. Every time they want to get out of Hellfire from anguish, they will be returned to it, and [it will be said], "Taste the punishment of the Burning Fire!" Indeed, Allah will admit those who believe and do righteous deeds to gardens beneath which rivers flow. They will be adorned therein with bracelets of gold and pearl, and their garments therein will be silk. And they had been guided [in worldly life] to good speech, and they were guided to the path of the Praiseworthy.”

Sayyid Qutb explains that these verses are in direct reference to the Battle of Badr. These verses are confirming that the battle provides the criterion for distinguishing the journey of the afterlife and one’s purpose.⁸⁵ Ibn Kathir also holds this to be true. This also appears to be a further discussion of the afterlife with regard to punishment and reward. Ibn Kathir, as well as some of the other commentators, holds that these are the punishments awarded to the Jews and Christians, as well as any other form of non-believer. Additionally, these verses will be important when discussing the Battle of Badr later on in this paper.

22:39-41

⁸⁵ Bergesen, *op cit*, 44

"Permission is given to those who are fought because they were wronged - surely Allah is able to help them - who were expelled from their habitations without right, except that they say 'Our Lord is Allah.' Had Allah not driven back the people, some by the means of others, there would had been destroyed cloisters and churches, oratories and masjids, wherein Allah's name is much mentioned. Assuredly Allah will help him who helps Him - surely Allah is all-strong, all-mighty - who, if We establish them in the land, perform the prayer, and pay the alms, and bid to honor, and forbid dishonor; and unto Allah belongs the issue of all affairs."

Firestone writes that this verse abrogates an earlier one (Q:7:180) which stated that it was a necessity to avoid conflict. This lifts the "so called" ban on fighting. Al-Jalalayn asserts that this is the first direct mention to the struggle, or *Jihad*. His justification lies in that the Muslims have been wronged, but that it is the time to stand up and rebel against their great struggle. He explains that this ayah is written especially for those who had been expelled from their homes as a form of religious persecution. Ibn Kathir agrees with this line of reasoning and that it is the first direct commandment for *Jihad*. Ibn Kathir also explains that this is the strongest way to display obedience to Allah, and submit to Him.

22:58

"Those who leave their homes in the cause of Allah, and are then slain or die, -on them will Allah bestow verily a goodly Provision: truly Allah is He Who bestows the best Provision."

Al-Wahidi explains that this is an extension of reward. The provisions mentioned are that of Paradise for the dead and spoils of war for those who remained alive.⁸⁶ This ayah serves as a constant reminder that the work is never done, but the reward will not cease either. It is this further encouragement of *Jihad* that will propel a lot of the decisions of Islam and war strategy.

Ibn Kathir explains that the people who have left their homes in the cause of Allah are seeking to earn his “pleasure.” They had to leave behind their homelands, families and friends all in the sake of Allah and Muhammad.⁸⁷ That, ultimately is the basis to be rewarded and also why such a reward is necessary and warranted. This is yet another encouragement for the *shahada*.⁸⁸

The aforementioned verses will serve as a constant textual framework for Jihad and will be referred to throughout the remainder of this paper.

⁸⁶ *Al-Wahidi, op cit, 22:58*

⁸⁷ *Ibn Kathir, op cit, 22:58*

⁸⁸ *Trans: Martyrdom*

II. Establishing Islam in Arabia

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This map displays the major territories within the Arabian Peninsula that were established during the time period discussed in this section.

⁸⁹ Tayob, A. *Islam: A short introduction*. Oxford, England: Oneworld Publications, 2003.

Jahiliyya

Pre-Islamic Arabia, characterized by the term *jahiliyyah*, is known to Muslims as a period of ignorance. Its history is compiled from reports of neighboring peoples, some remaining inscriptions in ancient ruins, and from Muslim literature following the period.⁹⁰ This period of ignorance is considered the juxtaposition of a true and pure Muslim world. “The term [*jahiliyya*] is revealing, for its very use illuminates the powerful Muslim historiographic bias regarding pre-Islamic Arabia. The ancient period is typified as being a time of ignorant idolatry, moral decadence, and near social anarchy.”⁹¹ The geographic topography of the region created tough conditions for armies to establish dominance. The region is surrounded by water on three sides and is laid by hot deserts with uncomfortable conditions. Firestone writes:

Because the armies of the empires never succeeded in controlling Arabia, oppressed peoples wishing to flee state-imposed restrictions in the Fertile Crescent sometimes slipped south of the frontier. Such peoples included unorthodox expressions of Judaism and Christianity, which were pressured, oppressed, or outlawed by the external imperial authorities or their own internal religious hierarchies.⁹²

Aside from those inhabitants, Bedouins and other nomadic Arabs were prevalent in the region, as well as other Arab residents. The characteristics of the time period were also developed by the warring militias and armies within the region, leading up to the period

⁹⁰ Firestone, *op cit*, 20

⁹¹ *Ibid*

⁹² *Ibid*

of revelation. Many leaders came to power but were quickly thwarted by a neighboring conquest. Firestone explains that there is most likely a bias with using this term (*jahiliyya*) because Islam has its own attitude toward the period. He writes that Islam has its own agenda with regard to establishing the parameters of morality, and that is where their interpretation of this time period comes into play.

The Time of Muhammad

Muhammad was born in Mecca, a west central Arabian town, to the Hashemite clan, “a part of the large and dominant tribe of the region known as the Quraysh.”⁹³ Muhammad was raised by relatives within the clan because his parents died before he was past childhood. “As he grew older, Muhammad’s reputation as a remarkable young man, well liked and respected by his townsmen, grew.”⁹⁴ Mecca was known as the spiritual center for that tribe, and that factor most likely influenced Muhammad and the establishment of Islam. During his life, Muhammad was portrayed as the ideal model for Quraysh on a moral and religious level. This of course changed after receiving the first revelations from God around 610 A.D. Many of the Quraysh who had entrusted him lost their support for him. Muhammad left Mecca to settle with supporters in the city of Yathrib, just north of Mecca. This city later became known as the City of the Prophet.

Following Muhammad’s revelations and the further development of an Islamic power, the necessity to spread the word of God became more apparent. The Quraysh did

⁹³ *Ibid*, 27

⁹⁴ Tayob, A. *Islam: A short introduction*. (Oxford, England: Oneworld Publications, 2003), p. 2

not leave him alone, despite the fact that he moved from them.⁹⁵ Muhammad promised to protect his followers, so he assumed the role of General and Commander leading the army to both victories and defeats. Following the order of *Jihad*, unbelievers were categorized either as those who would cooperate, combatants, or those who were being protected by Muhammad. If a treaty was violated, Muhammad was to wage war upon the transgressor.⁹⁶

Muhammad launched approximately 80 missions during his migration until his death in 632 A.D. “Long before Islam, the Greeks and the Romans had learned that a battle could change the destinies of nations. Among the campaigns of the Prophet, there were five battles which were said to change the destinies of nations. They were the battles of Badr, Uhud, Khandaq, Khyber and Hunayn.”⁹⁷ Muhammad viewed the main enemy in the region, the Quraysh, as prohibiting the word of Allah. Thus, *Jihad* was declared upon them.

The men that followed Muhammad (and became his army) were known as the Muhājirun. These were generally men who were persecuted by fellow Bany Quraysh men (who had rejected the revelations). According to Arthur Jeffery, a Professor of Semetic Languages at the school of Oriental Studies in Cairo, Muhammad proposed to the Muhājirun that “all of Arabia should be the land of Allah,” and he “planned vigorous measures to insure that within its borders the religion of Allah should be supreme.”⁹⁸ Aside from the aforementioned Quraysh, there were sects of Jews and Christians that inhabited the land that Muhammad sought out to conquer. The Jews and Christians were

⁹⁵ *Ibid*, 3

⁹⁶ Bergesen, *op cit*, 45

⁹⁷ Retrieved from www.Al-Islam.org in the section “The Battles of Islam”

⁹⁸ Bostom, A. G. *The legacy of jihad*. (Amherst, NY: Prometheus Books, 2005), p. 24

allowed to remain in the land if and only if they agreed to be subjects to the law of Allah. On the other hand, the Arabs, according to Jeffery, would not go down without a fight. This new religion, in turn, would have to be forced upon them. “But war in the name of Allah is Holy War, and so even in the Prophet’s lifetime we have the question of Jihad.”⁹⁹

The Battle of *Badr* (*Ghazwat badr al-Kubrā*)

The Battle of Badr is seen as the turning point of translation for Muhammad’s revelations to his establishment of a Muslim world (*dar al-Islam*). In Sayyid Qutb’s *Milestones*, he writes “God describes this battle as ‘*the day when the true was distinguished from the false, the day when the hosts met in battle.* (Verse 41)’”¹⁰⁰ The Quraysh and the Muhājirun met at Badr in what looked like an ensured defeat for the Muslims. The Muslim army was clearly outnumbered. Some Muslims did not move quickly at first to follow Muhammad because they did not think he would follow through with the promise of victory from Allah. Others were enthused because they were just coming back from a victorious raid of the Ibn al-Hadrami (Quraysh) caravan. The Quraysh however got news about Muhammad’s plans to attack at Badr.¹⁰¹ Thus, the Quraysh sought to severely outnumber the Muslims, and they did by about 3 to 1.¹⁰²

⁹⁹ *Ibid*, 25

¹⁰⁰ Bergesen, *op cit*, 44

¹⁰¹ Firestone, *op cit*, 112

¹⁰² Retrieved from www.al-islam.org/history

Sighting: a) Abdul Malik Ibn Husham □ Al Seerah Al Nabaweyah (Biography of the Prophet) Published by Mustafa Al Babi Al Halabi, Egypt, 1955 A.D Part 2 page. 621

b) Same as above Part 2 page. 708-713

c) Al Maghazi (The Invasions) published by Oxford Printing. Part 1 page. 152

The battle began following the death of three of Muhammad's men, who were immediately seen as martyrs. Following the deaths, "hundreds of companions participated in the battle and offered sacrifices and pleased their Lord."¹⁰³ This is perhaps the first instance of martyrdom within Islam. Muhammad turned to Allah and his army became victorious in their *Jihad* at Badr. "This battle laid the foundation of the Islamic State and made out of the Muslims a force to be reckoned with by the dwellers of the Arabic Peninsula."¹⁰⁴ Qutb writes "Exceptionally important as that battle is, its true value cannot be clearly seen unless we understand its nature and realize that it was merely one episode of *Jihad*. To appreciate it fully we also need to understand the motives of *Jihad*; and we certainly cannot understand those unless we fully understand the nature of Islam itself."¹⁰⁵

¹⁰³ *Ibid*

¹⁰⁴ *Ibid*

¹⁰⁵ Bergesen, *op cit*, 45

III. The *Jihad*

Introduction

Rudolph Peters, in his book *Jihad in Classical and Modern Islam*, explains that there are seven main aspects concerning *Jihad* and the legal doctrine surrounding it. These seven aspects are: (1) The legal qualification (*Hukm*) and the persons obliged to take part, (2) the enemy, (3) the damage allowed to be inflicted, (4) the prerequisites for warfare, (5) the maximum number of enemies for which one is obliged to stand his ground, (6) Truce, and (7) the aims of warfare. It is crucial to examine each aspect of these seven to determine their relationship to Just War Theory. This will be a key tool in the determination on as to which forms and/or aspects of *Jihad* are in accordance with Just War Theory.

The *Hukm*

“Fighting is prescribed upon you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you.”¹⁰⁶ Numerous scholars contend that this ayah is the beginning of the unavoidable, enforced nature of the *Jihad*. Rudolph Peters explains that this is a collective obligation to fulfill the requirements of the struggle. The analysis of this ayah in Section I explains that *Jihad* is a collective action and does not always involve the sword. Thus every man is not required to take up arms. Ibn Kathir furthers that this just means support by Muslims. Firestone (as previously mentioned) explains that this obligation to fight is in

¹⁰⁶ Qur'an, 2:216

accordance with *fard kifaya*,¹⁰⁷ unless there is a need for reinforcements. The fact that this is a collective obligation is furthered in Qur'an 9:122 as well. Peters explains that this insinuation can be made when discussing Muhammad. He says that the Prophet never left a man behind before going out to battle. It was the responsibility of each man to participate in the *Jihad*.

The Enemy

Based off of research and discussion within the *Tafsirs*, it is clear that all polytheists should be fought as according to the doctrine of *Jihad*. Qur'an 8:39 states "And fight them on until there is no more persecution, and religion becomes Allah's in its entirety..." As noted before, Ibn Abbas relates this to the Battle of Badr (see page 39) and uses that battle as the model for future *Jihads*. He explains that that was the monumental battle for the recognition of the enemy. The enemies of course are those who do not believe in, and fear Allah, as well as those who intend to prevent others to do so.

The Damage Allowed to be Inflicted

Damage as a result in war can be physical and/or mental. It can include the suppression of freedoms of a people, as well as their livelihood. For a very literal discussion of damage and punishment against another nation, we turn to Qur'an 5:33. It explicitly states the punishment for those who are against Allah, and who find themselves on the opposite end of the *Jihad*:

¹⁰⁷ Recall from Section I that this term means: there are enough men volunteering to fight, so not every man is obligated to do so.

“The punishment of those who wage war against Allah and his messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land; that is their disgrace in this worlds, and a heavy punishment in theirs in the hereafter.”

As noted before, al-Hassan al-Basri purports that there are different categories of enemies. There are those who wage a physical war, and there are those who wage the spiritual and religious suppression categorized as the other type of war. However, those who repent, are no longer considered enemies and therefore cannot have damage inflicted upon them.

Qur’an 8:12, which states “smite ye above their necks and smite all their fingertips off them,” makes it explicit that the finale damage, death, is warranted on the non-believers. Of course, their characterization is not always clear as stated in **Issue 2** of Lichtenberg’s analysis of the problems of Just War Theory.¹⁰⁸ According to Ar-Rabi’ bin Anas, this too was an order following the Battle of Badr.

The Prerequisites for War

This area of discussion is particularly important with regard to the comparison to Just War Theory’s *Jus ad Bellum*.¹⁰⁹ “According to all scholars, the prerequisite for warfare is that the enemy must have heard the summons to Islam.”¹¹⁰ That is to say that the Muslims must have extended the invitation to follow in the ways of the Prophet

¹⁰⁸ See page 60 of this thesis

¹⁰⁹ How to act before entering into war

¹¹⁰ Peters, *op cit*, 37

Muhammad and obey and fear the rule of Allah. If that is refused, then there must be an offer to obey the Muslim rule and pay the *jizyah* (poll tax). This idea is supported in Qur'an 4:89-91, stating that "those who reach a people between whom and you there is an alliance, or who come to you, their hearts shrinking from fighting you..." and then again in Qur'an 9:5, "but if they repent, and establish regular prayers and pay Zakat, then open the way for them." Other than that, there is no real establishment of prerequisites. This will create an issue when relating to Just War Theory criterion, especially *Jus ad Bellum*.

Number of Enemies

While there is not much written on this topic, Peters explains that there is a maximum number of enemies that one is obliged to fight against; and that is double the size of one's own army. Of course, there is special consideration with regard to the use of special weapons and deadly force. It has to do with proportionality.¹¹¹

Truce

The first mention of truce happens in Qur'an 2:193, where the second half of the Ayah states "but if they cease, let there be no hostility except to those who practice oppression." This leaves the possibility for truce open. That is to say if the oppressor agrees to no longer persecute, and agrees to pay *jizyah*, then war can cease, and certain important factors if *Jihad* are accomplished. As noted earlier, Peters holds that this will only happen at the end of all Muslim persecution. If peace is offered, as mentioned in

¹¹¹ *Ibid*, 38

Qur'an 4:89-91, then it is to be taken because Allah did not intend to fully fight the opposition, and thus the Muslim people must follow the will of Allah.

Peters holds that there are times where the Imam will require the oppressor to come under Islamic rule, and that a *jizyah* is not warranted. The opposite is true as well. If the Muslims are nearing defeat, the Imam is instructed to make a truce with the oppressor, and at times is even warranted to pay a monetary price to achieve a truce.¹¹² Since there is much discussion within the Qur'an to destroy all nations of non-believers, it is questionable on which statements are abrogated. Consequently, it is maintained that truce is only admissible in cases of necessity.¹¹³

The Aims of Warfare

It should be clear by now that the aims of warfare are interpreted differently not only by the scholars, but also by the verses within the Qur'an. It has been noted that various verses have been abrogated by later verses. What is clear, though, is that the aim of warfare is for the success of Islam. Central is the concept of oppression and suppression of Muslim views and beliefs. Numerous times it is stated to destroy the persecutors because "persecution is worse than slaughter."¹¹⁴ War must continue until "the religion becomes Allah's."¹¹⁵ Death is not necessarily a factor when evaluating the aim. The belief of the afterlife and that "forgiveness and mercy from Allah are far better than all they could amass,"¹¹⁶ becomes the driving force behind the decision of each Muslim man to take up arms and fight for the cause of Allah. This creates the army that

¹¹² *Ibid*, 39

¹¹³ *Ibid*

¹¹⁴ Qur'an, 2:191

¹¹⁵ Qur'an, 2:193

¹¹⁶ Qur'an, 3:157

is to carry out the mission of Islam and continue the continuous struggle that is known as *Jihad*.

Jihad from a Wahhabist Perspective

The works being used to examine this perspective will mainly be taken from a primary source, the *Kitab At-Tauhid*, written by Shaikhul-Islam Muhammad bin Abdul-Wahhab and translated by Darussalam Publishers, as well as works by Wahhabi scholar Sayyid Qutb. To understand their perspective first we turn to their backgrounds.

Muhammad ibn Abd al-Wahhab (1703-1792) was an Arabic Salafi¹¹⁷ and is known as the founder of the Wahhabi movement. Al-Wahhab made a pact with the Saud family and successfully permeated his beliefs within the Saudi Arabian kingdom. Al-Wahhab, at an early age, displayed tendencies to reject the popular version of Islam. After being expelled from his first school, he was sent to Medina to study under the auspices of Muhammad Hayya. Hayya taught al-Wahhab to reject mainstream beliefs and interpret the Quran differently.¹¹⁸ Al-Wahhab saw himself as the one who would re-purify the Islamic people. Many rulers, including al-Saud¹¹⁹, agreed with the new direction that al-Wahhab offered. These rulers pledged the support necessary for al-Wahhab to thrive as the leader of an emerging movement, while granting complete legitimacy to his claims.

Sayyid Qutb (1906-1966) was the leader of the Muslim Brotherhood, a conservative Islamic movement, and an Egyptian scholar on Islamic theology. Many of his works were pieces that encouraged activism for Muslims. When Egyptian president Gamal

¹¹⁷ A *Salafist* is a Muslim who emphasizes the importance of following in the ways of the first Muslims.

¹¹⁸ Voll, J. *Muhammad Hayya al-Sindi and Muhammad ibn Abd al-Wahhab: An Analysis of an intellectual group in eighteenth-century madina*. 38. (Cambridge University Press on behalf of School of Oriental and African Studies. pp. 32-39, 1975)

¹¹⁹ King of the Arabian Provinces

Abdel Nasser was assassinated it was clear that the Brotherhood was responsible. Qutb was jailed for the assassination. While in prison, Qutb wrote many articles on Islam including a 30-volume commentary on the Quran called *In the Shade of the Quran*. Qutb was released in 1964 but then later jailed with charges of terrorism and armed revolt. Qutb was hanged along with two other Muslim Brotherhood leaders on August 29th, 1966.¹²⁰

***Jihad*- The Defensive Offensive**

“Jihad is essential for the Islamic message, if it is to be taken seriously as a declaration of the liberation of man, because it cannot confine itself to theoretical and philosophical arguments. It must confront existing situations with effective means, whether the land of Islam is secure or under threat from neighboring powers.”¹²¹

When evaluating the intentions of *Jihad*, one might be led to believe that it is strictly interpreted as defensive. It has been stated numerous times that Islam fears losing its own identity and *Jihad*, as well as all actions related, are the means of resistance, especially so that the world does not return to a time of *Jahiliyyah*. Thus, the motives can be perceived as defensive. *Jihad* becomes inevitable. If it were to disappear, there would be no more striving for God’s cause as stated by Qutb, Kathir and other commentators. Wahhabism, and al-Wahhab for that matter, further recognize that *Jihad* was never

¹²⁰ Bergesen, *op cit*, 3-4

¹²¹ *Ibid*, 50

defensive as defined by the terms of today's defensive wars. It is actually a more positive movement to liberate man.¹²²

The first verse mentioned in Section I (Q' 2:190-191) is a prime example of the "new-defense" that *Jihad* offers. It explains the importance of fighting and qualifies it as both a defense against persecution, but also notes the importance of the offensive nature by stating that "Persecution is worse than slaughter." Ayah 2:193 mentions the importance of the drive of *Jihad* while relating to Qutb's feature of continuous mission (feature 3 mentioned below) by stating to "fight them on until there is no more Persecution and the religion becomes Allah's." This creates a very adversarial and offense based attitude for the plight of Islam.

Qutb's Three Features of Jihad

Sayyid Qutb outlines three very specific stages with regard to the development of Global *Jihad*. In striving for God's cause, these features are profound.

The first feature is the realism of the Islamic approach. "Islam is a movement confronting a human situation with appropriate means."¹²³ The Islamic approach is the opposite of ignorance, or *Jahiliyyah*, and must be conducted through vigorous means. The end goal is to rid the world of external ideologies that prohibit the mission of Islam. These ideologies are ones that force others to reject Allah. *Jihad* is a means to liberate the people. It is not easy, and it is not to be used as a means of coercion for personal gain.

¹²² *Ibid*

¹²³ *Ibid*, 46

The second feature of *Jihad* is the fact that Islam is a progression which does not “confront practical realities with abstract theories, nor does it use the same old means to face changing realities.”¹²⁴ It is meant to spread freedom and provide an environment of Islamic values and inclusion. *Jihad* is not strictly defensive; it is more offensive in order to spread the true value of Islam.

The third and final feature is that *Jihad* is continuous in mission and is by no means a diversion from Islamic principles and well-defined objectives. The theme of Islam remains the same from the day Muhammad had his first revelation. “It wants people to achieve the same objective of worshipping God alone, submitting themselves to none other than Him.”¹²⁵ There is no compromise with this rule according to Qutb. Anyone who impedes upon these stages and the complete submission to Allah must be intervened with, resisted and fought by Islam.¹²⁶

Sharia Reasoning and al-Wahhab

Sharia Law is central to Islam in that it is the “path”¹²⁷ that leads to being a lawful and moral Muslim. “With the advent of Islam, this extended sense lent itself to the notion of a path leading to ‘success,’ a way to paradise, a way associated with happiness in this world and the next.”¹²⁸ While the concept of salvation in Christianity is prevalent, it holds a different meaning within the religion of Islam. There is a further distinction of

¹²⁴ *Ibid*

¹²⁵ *Ibid*, 47

¹²⁶ *Ibid*

¹²⁷ *Trans. Of Sharia*

¹²⁸ Kelsay, J. F. *Arguing the just war in Islam*. 1st. ed. (Boston, MA: Harvard University Press), p. 44

right from wrong and good from evil. That is where Sharia Law comes into play. From this, the world ultimately moves toward judgment.¹²⁹

Moving into the ever modernizing world, a group of Muslim scholars had the recognition that there was an imbalance in the Muslim faith. *Jahiliyya* was becoming more prevalent. From this, al-Wahhab joined forces with the al-Saud family to recapture the region and further spread Islam and continue in the mission of *Jihad*. Kelsay writes:

As the Wahhabi-Saudi leadership understood it, the combination of ‘calling’ Muslims to repentance and punishing (fighting) anyone who refused the invitation was consistent with the Sharia vision of Muslim responsibility. Commanding right and forbidding wrong through the establishment of an Islamic state was the key in carrying out the mission of Islam.¹³⁰

This was of course at the time of different invasions occurring into Arab lands, such as the Russian incursions into Iranian territory. Al-Wahhab knew that it needed to be stopped, so he called for a renewal of *Jihad*. His followers become known as the Wahhabists. Today, some of the most notable followers include al-Qaeda and other followers of the notorious international terrorist, Osama bin Laden.

Turning back to the time of al-Wahhab, the 18th century is often described as the period of renewal and revival for Islam. Wahhabism is one of the many movements that were taking place in Islam. Wahhabism arose to fight internal conflicts and the

¹²⁹ *Ibid*

¹³⁰ *Ibid*, 77

“perceived deterioration in Muslim beliefs and practices.”¹³¹ This is where the need to reinterpret Sharia Law, as well as the push for new morality came from. These reformers who identified with al-Wahhab agreed that it was not enough to be monotheistic. In order to achieve the *Tawhid* (complete oneness of Allah), all modes and systems in government, politics and religion have to be governed by Sharia Law. Al-Wahhab “believed that this restoration of God to the center of Muslim public life was the key to recovering the power and prestige that Muslims had enjoyed in the past during the rules of the great empires and caliphates.”¹³²

It is important to note that al-Wahhab was a theologian who did not necessarily promote the same type of warfare that leaders like Osama bin Laden, Ibn Taymiyyah and Sayyid Qutb argued for. Al-Wahhab placed emphasis on the importance of the oneness of Allah. He believed in spreading it through means other than Global *Jihad*. It is true that the others do identify as his followers, in that they had the same belief in the importance of the *Tawhid*. The levels of interpretation are subject to other versions of extremism without question.

¹³¹ DeLong-Bas, N. *Wahhabi islam: From revival and reform to global jihad* (retrieved from www.islamicknowledge.co.uk), p. 8

¹³² *Ibid*

IV. Just War and *Jihad*

Examining Just War Theory

Just War Theory is a compilation of rules and procedure on how to act prior to entering war and while in the process of a war, and is divided as such- *Jus ad Bellum* which discusses the criterion to enter into war, and *Jus in Bello* which discusses how to act while in war. When reading this section, do recall the portion in Section III which discusses Global *Jihad* and its evolution.

Just War Theory has origins and compilations of thought dating back to the early Roman Empire. The actual doctrine was compiled by St. Thomas Aquinas in the mid-13th century. It is a doctrine with Catholic origin that is a guide to military actions as outlined by the Church. Aquinas's *Summa Theologica* Part II, Question 40 specifically discusses the following important questions which are central to the theory. First, is it always sinful to wage war? Aquinas raises objections from the Bible and New Testament which would make it seem that it is always sinful to wage war. He notes that despite the primary source objections, as the world has progressed to its current, war has become necessary. Quoting the ruler Augustine, he explains that had "the Christian Religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counseled to cast aside their arms, and give up soldiering altogether," thus leaving no defense for the Christian Religion itself.¹³³

¹³³ Aquinas, T. *The Summa Theologica: Part II, Question 40*. (Benziger Bros. Retrieved from <http://ethics.sandiego.edu/Books/Texts/Aquinas/Justwar.html>, 1947)

Aquinas furthers that there are three things necessary to have a Just War as according to the rule of God. **First**, he explains, no war can be waged by a private citizen. War is to be waged by the leader of a sovereign nation. The organization of an army is not a private matter. It is in fact the duty of the leader and ruler to protect his private citizens. Aquinas relates this to the ruler being required to exercise state law. For example, if a private citizen within that sovereignty commits a murder against another private citizen, it is up to the ruler to protect the will and lives of his citizens, and therefore the ruler is to take action against the transgressor. This is the same case for an external disturbance, such as a nation which may cause a threat of livelihood to that ruler and his sovereignty. Aquinas quotes Romans 13:4 saying “He beareth not the sword in vain: for he is God’s minister, an avenger to execute wrath upon him that doth evil.” This further justifies a ruler to take action for those he is entrusted to protect, even if the cost is war and death.¹³⁴ It is the “defense of the commonwealth against external enemies.”¹³⁵

Second, Aquinas explains that just cause is required to engage into war. Just cause according to Aquinas is regarding the fact that those who are set to be attacked “should be attacked because they deserve it on account of some fault.”¹³⁶

Third, this war has to have the purpose of the advancement of good and the suppression or avoidance of evil. This could include (as according to ruler Augustine) the need to secure peace in a region, the punishment of perceived evils and evil doers, and the furthering of the good cause. This is necessary because one legitimate ruler may enter a war with just cause, however the intentions create an unlawful war due to the

¹³⁴ *Ibid*

¹³⁵ *Ibid*

¹³⁶ *Ibid*

wickedness it may render or intend to render. Thus, these three points become the basis for Just War and further the discussion of *Jus ad Bellum* and *Jus in Bello*.

Jus ad Bellum

In 1993 the US Catholic conference discussed this issue as well as the teachings of St. Thomas Aquinas. The conference concluded that force may only be used to correct a grave and public evil. For example, if there is an aggression or massive violation of human rights of an entire population, then it is necessary to consider engaging in war, and war becomes justified. In order to make this determination, the Catholic Conference furthers that there are certain criterion. With regard to entering war, there first must be **competent authority**. There should be no question if the ruler is clouded by judgment. If there is even a shred of doubt with regard to the ruler's competency, no war can be just. The ruler needs to be able to make a confident decision on behalf of his entire nation.

Next, is there **comparative justice**? Comparative justice first recognizes the fact that no side of a war is perfectly just. However is one side more just than the other? When making the decision of whether to engage in war, the attacker must be more just in their cause than the nation or group that is about to be attacked. And, further, are the questionably violated rights at state serious enough to justify war?

The next aspect as recognized at the conference is whether or not there is **just cause**. For a possible entrance into war to be just, innocent life must be in danger and the only way to protect that life would be via intervention. Just cause does not include the need to recapture spoils of war once taken, nor can it be for the punishment of perceived wrongdoers.

Third, there must be a recognized **right intention**. This intention should be focused on the removal of any evils. Thus it must be clear what constitutes an evil, and moreover what constitutes the violation of a human and inalienable right.

Finally, in order to enter into war, all other options must have already been exhausted. Thus, war becomes a **last resort**. A ruler must first make considerations of negotiation as well as opportunities to correct the injustice without the means of war. So, if any of the four main criterion of *Jus ad Bellum* are not present (comparative justice, competent authority, right intention and last resort), then there is no full justification to enter into war.

Today, the most recognized doctrine of Just War Theory comes from the Catechism of the Catholic Church, specifically paragraph 2309. It states that there are very strict conditions for legitimate defense and military force. It states that “at one in the same time:

- a. The damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;
- b. All other means of putting an end to it must have been shown to be impractical or ineffective;
- c. There must be serious prospects of success;
- d. The use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition.¹³⁷

¹³⁷ *Catechism of the Catholic Church: Just War Doctrine*. (Retrieved from www.catholic.com/documents, 2013)

With regard to point (a.) the concept of lasting, grave and certain is emphasized because war cannot be used as a means of expanding one's sphere of influence. This could be anything from land to power or even wealth. Thus, "one can only go to war to counter aggression."¹³⁸ There must be complete certainty that morality is at the heart of war, and that there will be a positive and sustainable change with regard to an issue (concerning the suppression of human rights) at hand. While it may appear that the aggressor needs to strike first, that is not always the case. If it is noticed that a possible aggressor is amassing troops or munitions, then entrance into a war with said aggressor can be just. Today, there is much capability for distance attacking. Prevention is a justifiable cause for war.

Condition (b.) describes the concept of last resort. Today, there are more tools that can be used to correct a wrong before entering into an all-out war. "Alternatives include one-to-one diplomacy; international pressure; economic sanctions; and such tools as blockades, quarantines, covert actions, and small-scale raids that do not amount to a full-scale war effort."¹³⁹ The Catechism notes that upon further examination it may be realized that these modes will not solve the problem. They may be "impractical or ineffective." Damage is rendered inevitable. Thus, war becomes the last resort.

There is no event more chaotic and destabilizing than war. With that recognized, the Catholic Conference explains the need for point (c.). With the recognition that there is no way to guarantee success, the means and ends of the war need to come as close as possible to complete success. If this assurance is not there prior to entering into war, then

¹³⁸ *Ibid*

¹³⁹ *Ibid*

the war cannot even be considered. The primary concern is the protection of the innocence of mankind. If achieving that goal seems less possible, then the war is not deemed just.

The final point (d.) is concerning the balance of evils. The central question is if a greater evil will be produced by trying to eliminate one. The Catechism discusses that weapons of mass destruction are readily available and used. This creates a lot of unwanted collateral damage. For example, in the present war on terror, there have been mass casualties of non-combatant civilians. The question is thus raised as to whether or not these deaths are negated by achieving the goal first set when making the decision on whether or not to engage in war. “It is incumbent on those making the decision to go to war to attempt to the best of their ability to foresee both what damage will result if the war is conducted and what damage will result if it is not. The former must not clearly outweigh the latter.”¹⁴⁰ As previously stated, if all four of these points are not in accordance, then there is no *Jus ad Bello* and furthermore, no justification to enter into war. Any war waged would be considered unjust.

Jus in Bello

Once war has begun, the following set of criterion as outlined by the Catholic Conference of 1993 and the Catechism of the Catholic Church is to be followed with regard to how to act once entered in war. Once the decision to enter into a war has been made, the Catechism states that “The Church and human reason both assert the permanent validity of the moral law during armed conflict. The mere fact that war has

¹⁴⁰ *Ibid*

regrettably broken out does not mean that everything becomes licit between the warring parties.”¹⁴¹

First, there must be **discrimination between targets**. Acts of war are to be directed toward enemy combatants caught in circumstances they did or did not create. Moreover combatants are not permitted to target, with violence, any enemy combatants who have surrendered or who have been captured. This courtesy is also extended to those injured and not considered to be a presently imminent and lethal threat.

Next, there must be correct **proportionality** of force. Is the force that is being exerted comparable to the capable force of the wrongdoer? And with that being said, is there a **military necessity**? If this is determined, then there needs to be a use of **minimum force** to accomplish the goals set out before engaging into war.

The next aspect of acting just while engaged in war deals with the **fair treatment of prisoners of war**. It is a common occurrence to capture combatants for purposes of information gathering or bargaining. These newly deemed prisoners of war must be treated as human beings and nothing less.

Finally, in order to be just while engaged in war, there can be no *malum in se*.¹⁴² This means that there cannot be any weapons of evil used. These types of weapons are not limited to weapons of mass destruction and nuclear warfare. This could be anything from excessive torture to rape. These are not tools deemed necessary to quash a greater evil because these modes will generally create a greater evil, triggering an imbalance and violating the majority of the Just War Theory criterion.

¹⁴¹ *Ibid*, Paragraph 2312

¹⁴² Latin for wrong or evil

Brutality is a central concern with regard to *Jus in Bello*. “Frequently in the history of warfare, soldiers have maimed, raped, and even killed those who did not pose a physical threat to them. Sometimes this has escalated into genocide.”¹⁴³ The Catechism clearly states that there is a requirement to treat humans with dignity as well as humane morality. Anything else is to be considered a criminal action.

Recognizing Problems with Just War Theory

In Dr. Judith Lichtenberg’s essay entitled *Some Central Problems in Just War Theory*, she recognizes that there are imperfections and questions of morality with regard to present day Just War Theory. With regards to *Jus ad Bellum*, she questions the continuum of preemptive-preventative war, as well as armed humanitarian intervention. Next, she questions the distinction of combatants and non-combatants, particularly with regard to immunity and distinction for fighting. Finally, Lichtenberg questions the differences between criteria prior to and in war. This study of issue is of utmost importance when discussing *Jihad* as according to Just War Theory because it could easily re-distinguish whether certain *Jihads* are in accordance.

Issue 1 concerns the justifications for waging war (or *Jus ad Bellum*). Lichtenberg examines Walzer’s analysis on Post World War II justifications for entering into war. She explains that Walzer is interpreting the “legalist paradigm,” which are a set of guidelines governing international relations. These guidelines indicate that the “use of force or imminent threat of force by one state against the political sovereignty or

¹⁴³ *Catechism of the Catholic Church, op cit*

territorial integrity of another constitutes aggression and is a criminal act.”¹⁴⁴ But this raises some interesting questions about self-defense. In particular, must a state wait until it is attacked to defend itself? Or, can this state respond to an imminent threat?

Waiting to respond to an attack can prove to be deadly for a nation. Walzer argues that “both individuals and states can rightfully defend themselves against violence that is imminent but not actual; they can fire the first shots if they know themselves about to be attacked.”¹⁴⁵ This is where the distinction of a necessary preemptive war becomes blurred. The issue arises when a threat becomes less imminent. Preemptive war could ultimately become preventative, which would not satisfy the criterion of Just War Theory. Dr. Lichtenberg furthers that “potential aggression is not aggression, and the possibility of force is not identical with the imminent threat of force.”¹⁴⁶ This thought becomes concerning when discussing the implications of spreading Islam through means of Global *Jihad* because there is no clarity to perceived threats and their justification.

Issue 2 deals with noncombatant immunity. This is a discussion central in the Qur’an and will be discussed in the comparison of Islamic war and Just War Theory. First, it is important to identify this as a central problem of *Jus in Bello*. Like the Qur’an, as well as Christian teachings and Jewish halacha (Jewish law established via the Gemara and Mishnayot), the Geneva Convention holds the idea of noncombatant immunity to be central. Lichtenberg notes that it is important to define a noncombatant and to recognize the fact that that has changed since the writing of the religious primary sources. This of course deals with the innocence of a person. Thus, the question becomes “whether

¹⁴⁴ Lichtenberg, J. *Some central problems in just war theory*. In Hoffman, J. *The just war and jihad: Violence in judaism, christianity and islam*. (New York: Prometheus Books, 2006) p. 16

¹⁴⁵ *Ibid*, 17

¹⁴⁶ *Ibid*

certain classes of people in enemy territory or under the enemy state's sovereignty should be immune from attack."¹⁴⁷ Thus people need to be categorized as immune or not immune. Intent is also questionable. Is there a threat of harm from a non-combatant? If there is then it is permissible to attack, but if not, then it is not. This greys the area and makes Just War criteria nearly impossible to distinguish. This becomes important when discussing the justification of *Jihad* influenced attacks on civilians, as well as the question of collateral damage.

Lichtenberg concludes this thought and question by stating that the distinction between combatants and non-combatants "cannot be made in a way that justifies the principle of non-combatant immunity as it is usually understood."¹⁴⁸

Issue 3 surrounds assessing the legitimacy of creating war in conjunction with the conduct of that war. While certain acts of and in war are justifiable, many of them are not. Thus, according to Jeff McMahan and David Rodin, "Just war theory seems to be saying [that any war] is both just and unjust at the same time."¹⁴⁹ One might say that proportionality becomes the key focus here. However, like the other problems, this is another grey area of Just War Theory.

Is *Jihad* In Line With Just War Theory?

Referring back to Section III, there are the following categories that fall under *Jihad*: the enemy, damage allowed to be inflicted, prerequisites, the number of combatants, truce and the aims of warfare. In Just War Theory we are presented with

¹⁴⁷ *Ibid*, 20

¹⁴⁸ *Ibid*, 24

¹⁴⁹ *Ibid*, 26

slightly different categories including prerequisites as well as how to act while in war. The subcategories are more relative to the specifications for *Jihad*. First let us make the comparison of the *Hukm*¹⁵⁰ to the Just War condition to enter into war. The stage for *Jihad* is set with the notion that it is a collective obligation for man to take up arms in the name of God. Just War Theory dictates that there must be a form of comparative justice. So, in order for these aspects to share some form of congruency, then there has to be some form of persecution for the Muslim people. Some form of wrongdoing to them must be so wicked and debauched that it violates even the most basic human rights. This is without a doubt a possibility. Two examples where this could be a possibility is during the time of the Crusades or during the Holocaust. Religion was the dominant and determining factor of whether or not someone was granted life or death.

The next aspect of Just War Theory's *Jus ad Bellum* is the question of whether or not a competent authority is waging war. In Islam, the leader who declares *Jihad* and war on another nation is supposed to be prescribed by Allah. Since there are no Prophets, the Muslim community has to rely on the authority of their leader. The problem with comparing this aspect to Just War Theory criterion is the determination of who and what a competent leader is. The question of whether or not an election matters is important. Did the leader force his own way to power? Were intimidation tactics used at voting polls? Were there even voting polls? Does it matter if the rest of the free world does not feel this leader is competent, but the leader's own community finds no issue with his competency? With all of these questions and possibilities it makes it almost impossible to declare any leader completely competent. However, there remains the slight

¹⁵⁰ Recall- *Hukm* is the prescription to fight

possibility of competent authority so it does not completely nullify justification for *Jihad* as according to Just War Theory.

Determining right intention in Just War Theory hinges on the imbalance of evil. War is only just if it seeks to obliterate an evil. With regard to *Jihad*, the main prerequisite for war deals with the summons to Islam. Have the non-believers admitted defeat and either converted or accepted to pay *Zakat*? If not, then war is justified in Islam. If it were put in the Just War Theory context the question becomes whether or not anyone who hasn't submitted to Allah is inherently evil. There is no possible way to justify that. With that, this aspect of a call for war in Islam and in the name of Allah is completely unjustified. *Jihad* cannot hinge alone on converting everyone to the ways of Islam or Islam itself. There has to be a tangible, greater evil at hand for this piece to share congruency.

One thing that both *Jihad* and Just War Theory criterion blatantly share in common is the idea of last resort. Have all other options been exhausted? For the case of Islam, the Quran advocates numerous times for the initial peaceful spread of Islam. Recall Qur'an 2:193 where the second half of the Ayah states "but if they cease, let there be no hostility except to those who practice oppression." In the eyes of Islam, this is the last resort to accomplishing their goal of cooperative global Islam. There is more though to this concept of last resort. The main questions that must be asked go as follows: First, will the damage inflicted by the aggressor on the nation be lasting, grave and certain? Second, have all other means to achieve this goal proved exhausted and futile? Third, is success almost guaranteed (or will lives be lost in vain)? And fourth, will the balance of good and evil be restored? Only when all of these aspects are met will *Jihad* be that

much closer to being justified in this context. At this point though, one must begin to question whether or not this version of the spread of Islam is persecution in and of itself.

Now, let's shift the discussion to *Jus in Bello*. First, we discuss distinction. The acts of war must be directed at the combatants ONLY. If someone surrenders or has been captured, Just War Theory no longer declares that person a combatant. Qur'an 2:193 seems to follow suit with this condition. Qur'an 8:39 however takes the previous verse into question. At the end of the ayah it says "but if they cease, verily Allah doth see everything." This could mean one of two things: nonbelievers are always nonbelievers and there is no room for truce, or Allah recognizes their willingness to cooperate. Regardless, this is too unclear to completely say that it follows the Just War Theory guidelines. The answer to this question continues to remain unclear when referring to Qur'an 9:5 where it states, "but if they repent, and establish regular prayers and pay Zakat then open the way for them; for Allah is oft-forgiving, most merciful." The question of whether or not *Jihad* is for the sake of removing evil or suppressing other religions becomes prevalent yet again. So returning to the original point of distinction, is *Jihad* directed at combatants only? Most likely not with regard to the Just War Theory context and interpretation of what a combatant is.

Proportionality of force becomes the next issue central to this discussion. Just War Theory clearly explains that the force exerted must be comparable to the capable force of the wrongdoer. There must also be a military necessity and the use of minimum force. If you recall ayahs 5:33 and 8:12 you will see that the force to be exerted by the Muslim armies is proportional in the sense of a Hammurabi eye for an eye ideology. It is possible for this aspect to be consistent with Just War Theory criterion.

V. Conclusion

Today, the majority of Muslims are not declaring the physical *Jihad*. There do remain sects that see it as their mission to spread Islam through any means. To say that all of Islam focuses on the physical warring aspects would be completely wrong and insensitively ignorant. However, one cannot neglect the fact that it is prescribed at points throughout the Qur'an. So, this paper took a more widely used justification for war, Just War Theory, and analyzed it. All aspects were discussed, as well as possible pitfalls of the theory. This paper also took *Jihad* and explained the more present day version from the more widely recognized *Jihadists*. Through this study, I have arrived at the following conclusions:

1. Many verses within the Qur'an prescribe fighting.
2. Many verses within the Qur'an directly relate to aspects of Just War Theory.
3. The categories with regard to war and *Jihad* match up with certain categories in Just War Theory.
4. Based off of the comparison of the two, there is sufficient cause to doubt that *Jihad* will always fall in line with Just War Theory and thus will always be declared just.
5. The question of religious persecution is not clearly enough to engage into war as according to Just War Theory.
6. The Muslim justification to spread religion undoubtedly conflicts with Just War Theory.

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