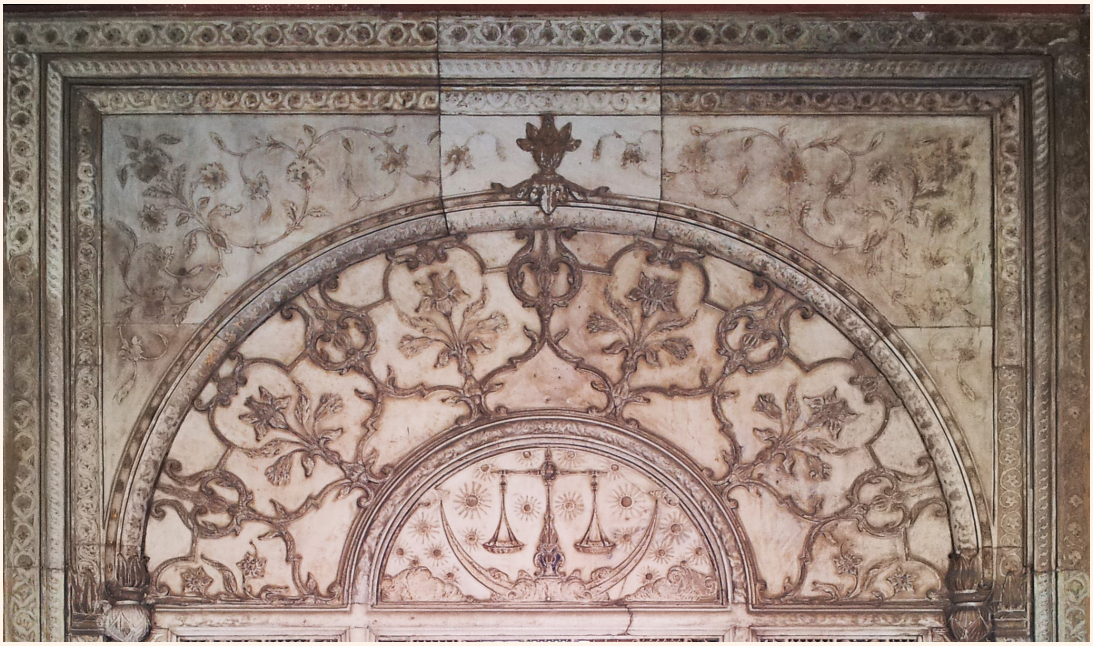

Justice, Nonaggression, and Military Ethics in Islam

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ARTICLE

IN THE SIXTEENTH CENTURY, the Spanish jurist Francisco de Vitoria helped develop the principle of noncombatant immunity in Europe, which today has become a hallmark of modern international law. This principle is foregrounded in the Geneva Conventions and their Additional Protocols enacted in 1949 that form the core of international humanitarian law, as well as in the Nuremberg Charter of 1943 that deals with war crimes. In his legal work, de Vitoria explicitly identified those who should be considered noncombatants and given protection during military combat: women and children, agricultural laborers, travelers, and the civilian population in general. In his conception of a universal law, the seventeenth-century Spanish jurist Las Casas similarly emphasized the need to protect women and children, religious functionaries, serfs, and other noncombatants during war. Interestingly, the requirement that these categories of noncombatants should be protected during armed combat was already well entrenched within the Islamic law of nations or international law (known as siyar in Arabic) that had crystallized by the eighth century.

These legal tenets in fact mirror foundational principles within the Islamic ethical and legal tradition that were already articulated in the writings of the early Iraqi jurist Abū ʿAbd Allāh Muḥammad al-Shaybānī (d. 805), regarded as the founder of the Islamic law of nations in the eighth century. After al-Shaybānī, generations of Muslim jurists would expand on these principles and continue to uphold in particular the requirements of just conduct during military campaigns.

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Can we then assume that the earlier Islamic law of nations ultimately influenced the articulation of modern international humanitarian law? There is good reason to think so. De Vitoria and Las Casas were both from the School of Salamanca in southern Spain that made major contributions to the development of international law in Europe. It is significant that considerable parts of southern Spain had been under Muslim rule until the fifteenth century. In the medieval period, Islamic law was taught in Spain as well as in southern Italy, which were culturally within the Islamic orbit. De Vitoria and Las Casas, along with Francisco Suarez, also from the School of Salamanca, had a great influence on the seventeenth-century Dutch jurist Hugo Grotius (d. 1645), who went on to fully articulate the rules of just conduct (jus in bello in Latin) in European law. Jus in bello considerations require just war adherents to respect the principles of proportionality and discrimination; the latter principle protects in particular the rights of noncombatants during warfare. Grotius, regarded in the West as the founder of modern international law, incorporated these principles in his work On the Law of War and Peace (known in Latin as De Jure Belli ac Pacis), which provided the basis for a modern law of nations in the West.

This is not to suggest that the concept of just war did not exist in Christian Europe before Grotius and the rise of the School of Salamanca. The concept in fact had already been formulated by Saint Augustine (d. 430), the fifth-century bishop of Hippo, in which he was at least partially influenced by the work of the Roman statesman Cicero (d. 43 BCE). Augustine maintained that a just war could be launched to avenge a real injury perpetrated by an external enemy and that it must be proclaimed by the legitimate authority who alone determines the justness of the cause. As for just conduct during warfare, he allowed the killing of noncombatants if that became necessary. In the twelfth century, the prominent Italian Catholic priest and philosopher Thomas Aquinas (d. 1274) would build on Augustine's ideas. But, like Augustine, he too made no distinction between defensive and offensive wars and was not concerned with the protection of civilians during war.

Since comprehensive rules of just conduct during hostilities arose so much later in Europe compared to the Islamic world and given the role of southern Spain as a conduit for Islamic learning to spread in Europe, the Islamic provenance of such ideas is highly plausible. We also know that the great translation movement based in Toledo during the twelfth and thirteenth centuries made Arabic scientific and philosophical works available to a European intelligentsia in Latin translation. Grotius was certainly aware of Islamic law even though he himself refers only fleetingly to it in his works, but then it was not customary in his period to cite one's sources as it is now for responsible academics. In Western discussions of jus in bello, the Spanish contributions to the development of this concept is readily acknowledged; its probable earlier Islamic genealogy has, however, only been sporadically suggested and usually resisted.

Muslim moral theologians and jurists, meanwhile, derived their concern for just and humanitarian conduct during warfare primarily from Islamic scripture. This led them to link Islamic military ethics to the concept of justice, one of Islam's bedrock principles meant to guide human thinking, ethics, morality, and actions. One may couple with justice the principle of nonaggression; both principles are closely linked in the Qur'anic milieu. Out of the many Qur'anic verses that focus on the importance of justice, two in particular—Qur'an 5:8 and Qur'an 2:190 —may strike us as having unusually poignant relevance for our world today.

Qur'an 5:8: Justice as a Nonnegotiable Principle

If ever there was a Qur'anic verse that would be most relevant in our contemporary world racked by conflict and violence, it would arguably be Qur'an 5:8. It is also one of the most difficult verses to act on, suggesting as it does that we overcome our instinctual, human response to retaliate in kind against those who inflict injustice and violence on us. But the Qur'an shows us that there is a more humane and morally superior way forward to address and ameliorate such gross injustices without succumbing to a deadly spiral of reflexive, retaliatory violence. The verse states:

> O you who have believed, be resolute in being upright for the sake of God and bearing witness in fairness and equity, and do not let the virulent hatred of a people [toward you] cause you to swerve from acting justly. Be just; that is closer to piety. And reverence God; indeed, God is well aware of what you do.

The rich commentary literature on the Qur'an (*tafsīr*) reveals a broad consensus among premodern and modern Muslim exegetes on the general meaning and relevance of this verse. Above all, they stress that in its construction of a distinctive mode of Islamic piety firmly anchored in justice, the Qur'an categorically rejects the revenge-based tribal code of military practices that were current among the pre-Islamic Arabs.

The famous late-ninth-century Qur'an exegete Muḥammad b. Jarīr al-Ṭabarī (d. 923) comments that this verse in general exhorts Muslims to be upright and just in their character and conduct toward all people, regardless of whether they are allies or enemies. Otherwise, if Muslims were to reciprocate the hatred of their enemies and act unjustly, then they would be guilty of stooping to their level and violating the commandments of God.

He remarks memorably that God in this verse enjoins Muslims to act in the following manner:

> Let your characters and dispositions be of the kind that makes you stand up for justice (*al-ʿadl*) with regard to your allies and your enemies; do not be unjust in your legal rulings (*lā tajūru fī aḥkāmikum*) and in your deeds and do not exceed the limits [of proportionality] in your response to their aggression against you; do not violate the boundaries I have set for you in regard to my commands and in regard to your allies on account of their alliance with you; observe my limit with regard to all of them and implement it according to my command.

The rest of the verse, says al-Ṭabarī, goes on to assure Muslims that when they treat their enemies justly and resist giving in to their impulse to retaliate, they are counted among the *ahl al-taqwā* ("people of piety"). Ultimately, the people of piety are those who conform to the dictates of justice.

In the late twelfth century, another well-known scholar, Fakhr al-Dīn al-Rāzī (d. 1210), similarly stressed that the verse cautions Muslims against harboring irrational hatred toward those who cause them injury. It counsels them instead to observe self-restraint and not give in to their anger. When the enemy behaves with "barbaric ferocity against you," states al-Rāzī, it is still necessary to act justly and observe the constraints of civilized conduct. This, he comments, is a broad injunction (*khiṭāb ʿāmm*) binding on Muslims.

The specific historical context is provided by an episode in Arabia in 628 CE, when the Meccans from the tribe of Quraysh attempted to prevent Muslims from approaching the Kaaba to complete the rites of pilgrimage. Regardless of this wrongful curtailment of their religious rights and other acts of injustice directed at them, Muslims were required to act in accordance with the dictates of justice and equity (*ʿalā sabīl al-ʿadl wa al-inṣāf*) and reject "partisan sentiment, oppression, and tyranny," comments al-Rāzī.

The twelfth-century exegete al-Zamakhsharī (d. 1144) took special note of the Qur'anic exhortation directed at seventh-century Muslims to "not swerve from justice" in spite of the grievous persecution visited on them by the pagan Meccans. The persecuted Muslims were commanded not to resort to unjust measures in their dealings with the polytheists out of a desire to gain the upper hand over them. Nor were they permitted to give vent to their anger by engaging in forbidden acts, such as killing women and children, and violating their treaties.

In the same vein, the modern Egyptian reformer and exegete Muhammad Abduh (d. 1905) put great stress on the obligation to behave justly even with one's own worst enemies. He comments that this injunction to be just is comprehensive and applicable to all the duties and tasks that the believer carries out in this world; these duties should be carried out without causing any harm to others and without any regard for blood kinship, wealth, or one's reputation or standing in society. This, Abduh says, is "the way of God" (*sunnat Allāh*) as we witness throughout history. In the absence of an uncompromising commitment to justice, corruption will prevail and social bonds will disintegrate. The description of *ʿadl* as being

close to piety means that it is an essential element of righteousness that cannot ever be abandoned. This principle must be strictly applied even toward non-Muslims, stresses Abduh, and he quotes a hadith in which the Prophet reminds us: "If one of the protected people (ahl al-dhimmah; namely, Jews and Christians) is mistreated then the state becomes an aggressor state" (*kānat al-dawlah dawlat al-ʿaduww*).

Qur'an 2:190: Nonaggression as a Corollary of Justice

Qur'an 2:190, which contains an explicit proscription against resorting to unprincipled aggression, may be understood to complement 5:8 in spirit and intent. The verse commands, "Fight in the cause of God those who fight you, but do not commit aggression, for God loves not aggressors."

The classical exegetes are in broad agreement that this verse was revealed against the backdrop of the events that transpired at al-Ḥudaybiyyah, the name of a place near Mecca, in 628 CE (these events are also understood by many exegetes to be the occasion of revelation for Qur'an 5:8). In this year, the Prophet wished to perform the pilgrimage in Mecca with his followers. But when the pagan Meccans learned of this plan, they dispatched their troops to intercept the Muslims. This gambit forced the Prophet to halt his journey at al-Ḥudaybiyyah and caused the Muslims to fear that the hostile Meccans would attack them. In this context, the verse granted Muslims divine permission to defend themselves from attack in the hallowed precincts of the Kaaba, something they were previously forbidden to do. Our earliest exegetes understand the interdiction in Qur'an 2:190, "Do not commit aggression (*wa lā taʿtadū*), for God loves not aggressors," to represent a clear and general prohibition against initiating hostilities under any circumstance, even against a most intractable enemy as the Meccan polytheists. The larger implication of this interdiction is that Muslims may resort to armed combat only in response to a prior act of aggression by the adversary. The early Qur'an exegete Mujāhid b. Jabr (d. 722) affirms this position when he comments succinctly that according to this verse, one should not fight until the other side commences fighting. Other early scholars from the first three centuries of Islam, like the Companion Ibn ʿAbbās (d. ca. 687) and the pious Umayyad caliph ʿUmar b. ʿAbd al-ʿAzīz (d. 720), stressed that the verse categorically forbids Muslims from ever initiating fighting against the enemy.

When the enemy behaves with "barbaric ferocity against you," states al-Rāzī, it is still necessary to act justly and observe the constraints of civilized conduct.

The eighth-century Kufan exegete Ismāʿīl b. ʿAbd al-Raḥmān al-Suddī (d. 745) is similarly unequivocal in maintaining that "God does not like the initiation of attacks [even] upon wrong-doers/oppressors or anyone else" (*inna Allāha lā yuḥibbu al-ʿudwān ʿalā al-ẓālimīn wa lā ʿalā ghayrihim*) and that fighting is allowed only against those who initiate hostilities and only "to the extent that they aggress against you." Qur'an 2:190 therefore echoes the admonition contained in Qur'an 5:8 warning against succumbing to unprincipled and vengeful desire to punish and inflict disproportionate damage on the enemy. As al-Suddī stresses, proportionality in a military response is an integral

part of the Qur'anic ethics of warfare, a principle explicitly articulated in Qur'an 2:194, which states, "Whoever attacks you, attack him [only] to the extent of his attack." When legitimate warfare ensues, Muslim troops are encouraged to fight robustly in order to defeat the enemy and restore order. Muslim warriors have the right to defend themselves through proportional military force so long as hostile forces continue to carry out armed attacks against Muslims. This guidance has nothing to do with the religious beliefs of adversaries but rather with the nature of their conduct—whether peaceful or aggressive.

In addition to categorically prohibiting the initiation of fighting by Muslims, Qur'an 2:190 was understood by influential commentators and jurists to mandate humane and just conduct while engaged in legitimate combat. For example, al-Ṭabarī interpreted the nonaggression clause in this verse as primarily prohibiting the targeting and harming of noncombatants—typically women, children, the elderly, the chronically ill, religious functionaries, and serfs—during warfare. He quotes the prominent Companion Ibn ʿAbbās as saying, "You should not kill women, children, the elderly, and the one who offers peaceful greetings and restrains his hand. If you do so, you will have resorted to aggression" (*fa qad iʿtadaytum*). The pious Umayyad caliph ʿUmar b. ʿAbd al-ʿAzīz is said to have written to one of his military commanders, instructing him on the basis of this verse, as follows: "Do not fight those who do not fight you: that is, women, children, and monks."

The late-eleventh-century exegete ʿAlī b. Aḥmad al-Wāḥidī (d. 1076) interpreted the command *wa lā taʿtadū* as prohibiting Muslims from initiating attacks or launching a surprise assault before at least a proclamation of war is made, for "God does not love aggressors." Aggression also consists of inhumane conduct during warfare, al-Wāḥidī reminds us, citing Ibn ʿAbbās's stricture against such behavior.

The Andalusian exegete al-Qurṭubī (d. 1273) offers full-throated support for this position of nonaggression in the thirteenth century. He understands this verse to have both a specific and general applicability. In its original revelatory context, it was specifically directed against the aggressive Meccan polytheists of the seventh century who had declared war against the Muslims. However, he stresses, its general prohibition against offensive military activity continues to be universally binding and normative (*muḥkamah*) for succeeding generations of Muslims.

The defensive nature of the military jihad, comments al-Qurṭubī, is already made explicit in the term used for "fighting" in the Qur'an: *qitāl*. He points out that, grammatically, the verbal noun of the Arabic third verbal form *fiʿāl/mufāʿalah* implies that there must be a recipient of the action implied in the verb; thus fighting (*qitāl/muqātalah*), he concludes, can be waged only against those who are combatants. Women, children, and other noncombatants, like monks, the chronically ill (*al-zamnā*), the elderly, and serfs, are therefore not to be attacked. Al-Qurṭubī finds further support for this position in a hadith narrated by the Companion ʿAbd Allāh b. ʿUmar, according to which the Prophet, when he noticed a slain woman during one of his military campaigns, expressed his revulsion and forbade the killing of women and children.

In the modern period, Muhammad Abduh emphasizes that Qur'an 2:190 allowed fighting as "defense in the path of God so as to allow unimpeded worship of Him in

Emir Abdelkader in Kabylia (1838-1839) / Wikimedia Commons

His house" and as a warning against those who break their oaths and seek to entice Muslims away from their faith. *Wa lā taʿtadū* is interpreted by him to contain both a proscription against initiation of hostilities by Muslims and attacking traditional noncombatants such as women, children, the elderly, the infirm, and "those who proffer you peace." It also prohibits destruction of crops and property.

These exegetical remarks on Qur'an 5:8 and 2:190 have been echoed by other Muslim scholars, creating a consensus among them about the need to observe the rules of just conduct toward all without any exception.

Impact of Qur'an 5:8 and Qur'an 2:190 on Islamic Military Ethics

The general prohibition contained in the Qur'an against resorting to unprincipled retaliatory tactics in response to the enemy's violent aggression came to inform Islamic military ethics in a fundamental way. Muslims, like other groups of people, certainly have the right to defend themselves when their basic human rights, including their right to worship freely, are violently encroached on and the security of their lives and property is at stake (Qur'an 22:39–40). However, the extent and nature of their defensive military response to the aggression of the enemy must be strictly regulated by just and humane considerations. Theirs cannot be a scorched-earth policy of blind vengeance that would, in particular, place noncombatants in harm's way, a moral injunction that Muslim soldiers are required to uphold to the best of their abilities.

Noncombatant immunity finds specific emphasis in the hadith literature in the context of just conduct during the waging of war. Two noteworthy hadiths—one narrated by ʿAbd Allāh b. Masʿūd and the other by Ibn ʿUmar—recorded by the eminent hadith scholar al-Bukhārī in his *Ṣaḥīḥ* forbid the killing of women and children during

battles. Two other reports from Ibn ʿAbbās emphasize the Prophet's specific proscription against the killing of children. Another important scholar from the ninth century, Ibn Mājah al-Qazwīnī (d. 886), records several reports from the Prophet strongly prohibiting attacks against women and children. Indeed, practically every major hadith collection that includes a discussion of the military jihad repeats these prohibitions against killing women and children.

The hadith manual of the early Medinan jurist Mālik b. Anas (d. 795), titled *Al-Muwaṭṭa'*, records a number of well-known reports, not all attributed to Muhammad, concerning ethical and humane conduct during warfare. According to one of these reports, ʿUmar b. ʿAbd al-ʿAzīz is said to have written to one of his governors and counseled them to follow the example of the Prophet and "not commit deception in the division of spoils, or commit treachery, or mutilate [corpses], and kill children." The immunity of noncombatants to attack is stressed in an additional report attributed to Abū Bakr, in which he famously proscribes attacking different groups of civilians. Furthermore, he forbids the burning of fruit-bearing trees and the unnecessary killing of animals.

Proportionality in a military response is an integral part of the Qur'anic ethics of warfare, a principle explicitly articulated in Qur'an 2:194, which states, "Whoever attacks you, attack him [only] to the extent of his attack."

Generally, the classical jurists paid considerable attention to the topic of noncombatants and their different categories. Taking their cue from hadiths that contain specific instructions against harming civilians and causing wanton destruction of farmlands and livestock, Muslim jurists have consistently upheld the importance of observing these restrictions through time. Thus Mālik b. Anas categorically prohibited the killing of women, children, elderly men, and monks and hermits in their cells. Malik further counseled that the property of monks and hermits should be left intact since that was their sole means of livelihood. He also cites the hadith in which the Prophet forbids his troops to resort to treachery and mutilation of corpses, and he records other reports similarly proscribing the killing of noncombatants, particularly women and children.

The well-known eleventh-century Shafiʿi jurist al-Māwardī (d. 1058) in his legal compendium *Al-Ḥāwī al-kabīr* provides a detailed discussion of who qualifies as a noncombatant. He describes genuine noncombatants as those who neither physically fight nor take part in war deliberations, such as the chronically ill, the incapacitated elderly, and monks and hermits who dwell in monasteries and cells, whether young or old. Abū Ḥanīfah (d. 767), the eponym of the Hanafi legal school, firmly maintained that such noncombatants may never be killed.

Agreeing with the majority of his predecessors, the Hanbali jurist Ibn Qudāmah similarly upholds a general immunity to attack for noncombatants. Animals are not to be indiscriminately slaughtered, plants and trees should not be cut down, nor should crops be burned as a general rule. Women and the elderly (*al-shuyūkh*) are never to be killed, asserts Ibn Qudāmah; this was particularly the opinion of Mālik, of the Hanafis, and of the Companion Ibn ʿAbbās, who also included children in this general, inviolable proscription. Other groups of people who are considered noncombatants by Ibn

Qudāmah are the chronically ill, the blind, hermits and monks, and enslaved people.

Hanafi jurists also list these restrictions against targeting noncombatants. In the eleventh century Muḥammad b. Aḥmad Abū Bakr al-Sarakhsī (d. 1090) asserts that only actual combatants may be targeted during fighting and lists the much-quoted hadith in which Muhammad deplores the killing of a woman on the day of the fall of Mecca because she was a noncombatant. Other proscribed acts include resorting to deception and treachery (*al-ghadr wa al-khiyānah*), the breaking of pledges (cf. Qur'an 8:58), and the mutilation of bodies (al-muthlah).

A general consensus, therefore, crystallized among a broad spectrum of Muslim scholars—Qur'an exegetes, moral theologians, and jurists—that failure to follow these well-entrenched protocols for waging war renders lethal force illegitimate and immoral.

But what if non-Muslims subscribe to military tactics condemned in Muslim sources, such as a no-holds-barred, scorched-earth policy of warfare and nondiscriminatory killing of combatants and noncombatants? Should Muslims adopt such reprehensible measures themselves? This question emerged in the legal literature in the context of a discussion of whether enemy corpses could be mutilated since non-Muslim nations resorted to this grisly practice. The jurists categorically answered, "No." This is evidenced in the following report recorded in several legal treatises. During the caliphate of Abū Bakr (632–634), one of his military commanders returned at the conclusion of a campaign with the head of one of the leaders of the enemy camp. The commander was rebuked by Abū Bakr for this act of mutilation. The former remonstrated in his defense that enemy troops habitually did that to Muslim soldiers. Abū Bakr sharply responded, "Are we going to follow the Persians and the Byzantines? We have what suffices for us: the Qur'an and the sunnah." Abū Bakr's response makes clear that Muslims may not ever abandon their scripturally mandated obligation to engage in just conduct during war, regardless of the brutal practices of the enemy.

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It cannot be stressed enough that justice is a nonnegotiable principle within Islam, adherence to which defines the righteousness of the believer. A core aspect of justice is exhibiting temperate behavior toward all without exception and the exercise of self-restraint even in the face of extreme provocation. Unprincipled aggression is morally wrong and never achieves its intended goal. It represents a relapse into barbaric tribalism that leads people to value only the lives of their fellow tribal members while debasing others'.

Both Islamic law and modern international law provide important safeguards for protecting the lives of civilians and preventing wanton destruction of property. But they only work when nations and other groups heed (or are made to heed) these legal and moral limits and display an unwavering commitment to justice—above national, ethnic, religious, and tribal allegiances.