

War and Peace in the Medieval Islamic World, 622–1453¹

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This chapter examines the arguments expressed by medieval² Muslim jurists on the laws of war and peace between the seventh and fifteenth centuries. The diversity of opinions and views does not allow us to impose a harmonious answer about them. Rather, it is necessary to accept the inherent disagreement among Muslim jurists as an unavoidable component of the laws of war and peace in Islam.

The study of war and peace in a complex religious tradition as Islam is not an easy undertaking. A mosaic of beliefs and sectarian divisions, Islam does not have a fixed view on pretty much any topic, including war and peace. Moreover, what we often call Sharī‘a does not exist as such. In reality, we can better speak of branches or systems of Islamic law, each having its own understanding of legal theory, sources and practice. This reality exists between the two major divisions of Islam – Shī‘ism and Sunnism – and within each one of them, and it is a consequence of the incoherence of the foundational sources (especially the Qur‘ān and Ḥadīth³) as well as the disagreements among early jurists and scholars. Moreover, the topics of war and peace are discussed in legal manuals, theological and doctrinal treatises, philosophical tracts and mystical discourses.⁴ This reality adds another layer of complexity to the study of war and peace in Islam in that the issues are not restricted to legal questions and Sharī‘a rules, and that each field has its approach, presuppositions and technical language. Add to this the fact that many Muslim scholars who wrote about the laws of war and peace bridged many disciplines, such as Ibn Rushd (Averroes) who was a Mālikī Sunnī jurist and philosopher, and al-Ṭūsī who was a Twelver Shī‘ī jurist and theologian. Consequently, it is important to keep in mind that discussions of the laws of war and peace in Islam were often impacted by other considerations that tied them to religious practice, doctrinal issues, philosophical principles, and more.

Furthermore, it is also important to acknowledge the contexts that impacted and shaped the jurists’ thinking about the laws of war and peace, and presented considerable motivation for them to form specific rules and question or accept older rulings.⁵ In other words, Muslim jurists were neither passively ‘submissive’ to an existing legal or scholarly tradition nor thinking in vacuum or beholden exclusively to the dictate of the foundational sources as their starting points for discussing the laws of war and peace. Instead, they often used and exploited the foundational sources and the views of earlier scholars in order to support and legitimize their own position on the questions of war and peace as necessitated by the changing circumstances, be they doctrinal or practical.

In this chapter, I will examine the laws of war and peace as discussed by medieval Muslim jurists. The divisions will follow the branches of Sharī‘a to which they belong, and involve the most important groups: four Sunnīs (Ḥanafīs, Mālikīs, Shāfi‘īs and Ḥanbalīs) and one Shī‘ī (Twelvers). I will also briefly

¹ Chapter ‘War and Peace in the Medieval Islamic World, 622–1453’ from the *Cambridge History of International Law*, Vol. 8, Part 1: International Law in the Islamic World.

² The use throughout this chapter of the term ‘medieval’ in relationship to Islam indicates roughly the period between the seventh and fifteenth centuries, and is dissociated from any historical or conceptual connotations it has in European history and modern historiographical tradition.

³ I mean by ‘Ḥadīth’ the loose canon of traditions attributed to the Prophet Muḥammad, Shī‘ī Imams, and a host of early Companions and scholars. It exists in a large number of sources, and each sect has its canonized versions. The question of authenticity is moot as far as this chapter is concerned because I will only use Ḥadīth traditions in order to show how they were quoted and used by jurists in forming specific views about war and peace.

⁴ For a survey, see Suleiman A. Mourad, ‘The Concept of Just War in Islam’ in Georges Tamer and Katja Thörner (eds.), *The Concept of Just War in Judaism, Christianity and Islam* (Berlin: De Gruyter, 2021) 93–147.

⁵ On the importance of the historical context of the jurists, see also Adnan Zulfiqar, *Collective Duties (Farḍ Kifāya) in Islamic Law: The Moral Community, State Authority and Ethical Speculation in the Premodern Period*, Ph.D. Dissertation (University of Pennsylvania, 2018) 114.

discuss the question of rebellion in Islam and its legitimacy or lack thereof, the concepts of communal (*farḍ kifāya*) and individual (*farḍ ‘ayn*) obligations, and a few examples from actual historical practice that illustrate war and peace in Islam beyond juristic discussions. This section will be followed with a summarizing conclusion that groups the discussions according to four categories: 1) Laws about initiating war, 2) laws about the conduct of war, 3) laws about ending war and post-war situation, and 4) laws about peace and truces.

Finally, when talking about war and peace in Islam, modern categories seem inadequate because of two important factors. First, Muslim jurists did not discuss war and peace under the categories of *jus ad bellum* (laws about initiating war), *jus in bello* (laws about the conduct of war) and *jus post bellum* (laws of ending war and post-war situation). The two major categories that were often used were *jihād* (warfare) and *ghanā`im* (spoils of war), with many subcategories under these two. It is prudent, therefore, not to impose the modern legal framework and definitions in a narrow sense, for this will hinder our understanding of the peculiarities of Islamic legal thought on war and peace, its context and its application. Therefore, in order to minimize historical anachronism, the modern categories might be invoked only in the broadest sense.

Islamic law

The examples analyzed below are chosen on the basis of their importance to convey the general landscape in Islamic legal thought about war and peace and some of the most important discussions that were made by Muslim jurists up to the fifteenth century. They are also meant to convey a range of views and also show how the geographical and political context or theological preoccupations might impact the way each jurist thought of the question of war and peace. It is very important to clarify that medieval Muslim jurists (as a collective) were invariably not concerned with the systematization of Islamic law. Therefore, I avoid imposing an evolutionary or chronological progression of Islamic thought on war and peace because doing so is both artificial and misleading. It is true that what came before could have informed or influenced what came after, but it is also true that what came after was expressed with full awareness that the jurist had the authority to disagree, ignore or amend what came before.⁶

Ḥanafī law: Abū Yūsuf, al-Shaybānī & Zayn al-Dīn al-Rāzī

The complexity of Islamic law on war and peace is displayed in one of the earliest recorded discussions by the Ḥanafī jurist Abū Yūsuf (d. 798), who was the chief-judge of Baghdad. In a question presented to him by Caliph Hārūn al-Rashīd (r. 786–809), Abū Yūsuf wrote:

You asked, O Commander of the Faithful, about the polytheists: Are they to be called to Islam before war or are they to be fought without any call? What is the common practice (*sunna*) regarding their call to Islam and fighting, and the enslavement of their offspring? Also, what about the war against the people of sedition from among the Muslims? Are they to be called to Islam and to join the community before they are fought? And how about the properties of those who are defeated?⁷

⁶ This is a big problem in modern academia in general, in that it is assumed that systematization (be it in theology, law, philosophy, etc.) that largely shaped Catholic thought apply as well to pre-modern Islamic jurisprudence and religious thought (and other non-western religious traditions too). This mistake often leads to mischaracterization and outright erroneous conclusions about Islamic thought. For clarification, systematization is the obsession to arrange a given field of religious knowledge linearly and present it as a self-consistent whole which eliminates contradictions and disagreements.

⁷ Abū Yūsuf, *Kitāb al-Kharāj*, ed. Iḥsān ‘Abbās (Beirut: Dār al-Shurūq, 1985) 378.

Hārūn al-Rashīd wanted to know the position of Islamic law regarding the motive and conduct of war against the polytheists and also against seditionist Muslims. Abū Yūsuf's answers reveal how early jurists thought of war and the challenges they faced in forming their opinion. He started his reply by saying that: 'According to the traditions that have reached us, the Messenger of God never fought a tribe until he first summoned them to obey God and his Messenger.'⁸ Abū Yūsuf then cited a prophetic ḥadīth⁹ supporting this view, and quoted a second one stating that when the companion Salmān al-Fārisī (d. ca. 656) led the war against the Persians, he ordered his troops not to fight them until he called them to Islam, like the way the Prophet used to do with the polytheists of Arabia.

But then, Abū Yūsuf offered a different view, namely that some early jurists claimed that polytheists everywhere who were reachable by Muslim troops already know of the call to Islam, and that Muslims are not obligated to call them to Islam before fighting them. He listed two reports in support of this, and added as well three prophetic ḥadīths that show the Prophet pausing his attack against a tribe until dawn time to verify if they make the call to prayer. When they did not make the call to prayer, he ordered his men to attack them. The import of these prophetic ḥadīths is that the Prophet did not bother to call them to Islam. He only wanted to ascertain if they were Muslims or not. Abū Yūsuf also cited a prophetic ḥadīth, which described the Prophet attacking the tribe of al-Muṣṭaliq without warning them or calling them to Islam.¹⁰ Again, the import of this ḥadīth is that Muḥammad did not see any reason to call them to Islam before attacking them.

The answer of Abū Yūsuf reveals three major realizations about his legal reasoning: First, he ignored the position of the Qur'ān on war. Second, he subtly admitted that the teachings attributed to the Prophet about war are contradictory and justify two opposing positions: war is or is not conditioned on the call of the enemy to Islam. And third, he plainly acknowledged that some jurists considered the Prophet's practice of the need to call the enemy to Islam before the war as no more applicable.

The distinction between the condition of war at the time of Muḥammad and the war after the Prophet's death is well established in Sunnī legal manuals. For instance, the Shāfi'ī jurist al-Māwardī (d. 1058) separated the discussion of war into three periods: before the migration to Medina, after the migration to Medina, and after the death of the Prophet.¹¹ Al-Māwardī argued that in each period the laws of war changed from what was before. Likewise, the Ḥanbalī jurist Ibn Qayyim al-Jawzīyya (d. 1350) divided warfare during the Prophet's time into three phases: the Meccan phase when 'war' took the form of calling the polytheists to Islam with preaching and persuasion; at this time, fighting was prohibited. Then in the early Medinan period warfare became a duty for the purpose of defense against those who attacked the Muslims. Then it became a duty against all polytheists, whether they attacked the Muslims or not.¹² Here as well, the laws changed.

Such arguments further complicate the applicability of the laws on war and peace from the time of the Prophet Muḥammad in that Muslim scholars do not necessarily agree if they are all still valid or only the latest ones, or if they have all been superseded by the practice of Muslim caliphs and opinions of jurists in the post-Muḥammad era.

⁸ Abū Yūsuf, *Kitāb al-Kharāj*, 378.

⁹ I use 'ḥadīth' to mean the individual report, whereas 'Ḥadīth' refers to the entire corpus.

¹⁰ For these discussions, see Abū Yūsuf, *Kitāb al-Kharāj*, 378–80.

¹¹ Al-Māwardī, *al-Hāwī al-kabīr*, ed. 'Alī Mu'awwad and 'Adīl 'Abd al-Mawjūd (19 vols., Beirut: Dār al-Kutub al-'Ilmīyya, 1999) 14: 102.

¹² Ibn Qayyim al-Jawzīyya, *Zād al-ma'ād fī ḥadīy khayr al-'ibād* (5 vols., Beirut: Mu'assasat al-Risāla, 1994) 3: 64.

Abū Yūsuf's companion al-Shaybānī (d. 805) – the two were the founders of the Ḥanafī school of Sunnī law, which they named after their teacher jurist Abū Ḥanīfa (d. 767) – also expressed his thoughts about warfare. For instance, he argued that war is not conditioned on calling the enemy to Islam if the enemy had already heard of Islam – it is fine if done, and fine if not done:

If the army raids the territory of potential hostilities (*arḍ al-ḥarb*), and if they have heard of the call to Islam, then it is equally fine if they (leaders of the Muslim army) call them to Islam or ignore it. It is also acceptable to attack them day and night without initiating a call. It is acceptable too to burn their fortresses by fire or flood it with water.¹³

Al-Shaybānī often weighed in with his personal view, and avoided the existing disagreements among jurists or the contradictions in the foundational sources. For instance, he was asked: ‘Do you disapprove that the Muslims destroy the villages they cross on their way in the territory of potential hostilities?’ He replied:

No, to the contrary, I see that as something commendable, for God had said in his noble book: “No palm-tree did you cut down, or leave standing on its trunk, except by God’s consent, and that he may shame the insincere” (Q. 59:5).¹⁴ I like that they do this for it ruses the enemy and makes them enraged.¹⁵

Al-Shaybānī also argued that it is up to the leader to order the execution or enslavement of captured enemy men according to which one of the two ‘he deems in the best interest of the Muslims.’¹⁶ He disallowed though the killing of disabled people: the blind, the paralyzed and the insane.¹⁷ He also allowed drowning enemy towns, burning them, or attacking them with mangonels even if normal people, women, old people and children live in them and are accidentally killed by such acts, and even if there were captive Muslims, Muslim merchants or children there who might be killed.¹⁸

With respect to peace, al-Shaybānī allowed that Muslims make peace with the enemy for a fixed number of years (he did not specify a limit) even without the payment of the *jizya*-tax, provided the Muslim leader deems this to be beneficial (*khayr*) to the Muslims. He also sanctioned that the Muslims pay a yearly tribute to the enemy if peace is in their benefit.¹⁹ In his opinion, any Muslim (including a slave) can issue to the enemy an *amān* (assurance of safety from death and not from enslavement), and the *amān* is legally binding.²⁰ Once a peace is in effect, if a merchant from an enemy land with whom the Muslims have concluded such a peace visits the land of Islam, he is protected and should not be harmed.²¹ Yet, if a person from an enemy land, with whom the Muslims have not concluded a peace, is found in Muslim land, he and what he carries are the property of the Muslims, unless he is an envoy from his king.²²

Al-Shaybānī argued these personal views even though he had quoted a ḥadīth at the beginning of his section on war, which states that: ‘Every time the Messenger of God dispatched an army detachment, he

¹³ Al-Shaybānī, *Kitāb al-Siyar*, ed. Majid Khadduri (Beirut: Dār al-Muttaḥida li-l-Nashr, 1975) 108; idem, *The Islamic Law of Nations: Shaybānī’s Siyar*, trans. Majid Khadduri (Baltimore: Johns Hopkins Press, 1966) 95 (in certain parts, Khadduri’s translation is inadequate).

¹⁴ Translations from the Qur’ān are generally based on Tarif Khalidi (trans.), *The Qur’ān* (New York: Penguin, 2008).

¹⁵ Al-Shaybānī, *Kitāb al-Siyar*, 110; idem, *The Islamic Law of Nations*, 99.

¹⁶ Al-Shaybānī, *Kitāb al-Siyar*, 134; idem, *The Islamic Law of Nations*, 100.

¹⁷ Al-Shaybānī, *Kitāb al-Siyar*, 135; idem, *The Islamic Law of Nations*, 101.

¹⁸ Al-Shaybānī, *Kitāb al-Siyar*, 135; idem, *The Islamic Law of Nations*, 101.

¹⁹ Al-Shaybānī, *Kitāb al-Siyar*, 165.

²⁰ Al-Shaybānī, *Kitāb al-Siyar*, 143.

²¹ Al-Shaybānī, *Kitāb al-Siyar*, 166.

²² Al-Shaybānī, *Kitāb al-Siyar*, 178.

would say to them: “Do not conduct yourselves brutally, do not commit treachery, do not mutilate the bodies, and do not kill infants, women or the elderly”.²³ So clearly, al-Shaybānī went beyond the legal contours of this prophetic ḥadīth, even contradicting it outright in some cases, as we saw above. He weighed in with his own views without always explaining his justifications for that. In a few instances, he quoted a verse from the Qur’ān, or a practice by the Prophet, but often his personal opinions did not seem to require a citation explaining their legal basis.

Both Abū Yūsuf and al-Shaybānī represent the formative period when jurists were asked or felt necessary to articulate the position of Islamic law on every issue they were facing. They were also active during the time when Muslim power reached its zenith, and therefore, they conceptualized things from the perspective of a dominating power capable to dictate its terms.

The later Ḥanafī jurist Zayn al-Dīn al-Rāzī (d. after 1267), who lived in Egypt and Syria during the Ayyūbid and early Mamluk periods discussed the laws of war in his book on Ḥanafī law. His context was very different in that he was active during the Crusader period, which witnessed a heightened level of warfare and peace agreements between the Muslims and Crusaders, and which also saw the start of the Mongol invasions. In other words, it was a low point in Muslim power.

Al-Rāzī began his discussion of war by affirming that offensive warfare is a communal obligation, whereas defensive warfare is obligatory on every Muslim. In this respect, he exempted slaves, women, blind people, as well as amputees from offensive warfare, not from defensive one.²⁴ Clearly, the distinction between the two types and who is obligated to partake in each one of them were necessitated by the geopolitical context of his time, when the Muslim world was the scene of Crusader and Mongol attacks. He also argued that the calling to Islam must precede fighting, and should be done in the following order: first, the call to Islam, and if refused then the offer to pay the *jizya*-tax. If the enemies rejected both, then they are to be fought with arms, flooding, fire, cutting of trees, destruction of crops, and they should be targeted directly even if they used Muslims as human shields.²⁵ But the Muslims are banned from excessive brutality, mutilating dead corpses, treachery and killing in direct battle the mentally incompetent, children, women other than the queen, the elderly, the blind, the disabled, and similar groups, unless they were involved in fighting or propaganda.²⁶

If a town is conquered by force, the Muslim leader has the authority, according to al-Rāzī, to decide its fate. He can divide it as a spoil of war among Muslim fighters, keep it in the hands of its inhabitants provided they pay *jizya*-tax or land-tax (*kharāj*), kill the combatant prisoners if they refuse to convert to Islam, enslave them even if they convert to Islam, or accept that they enter into the protection (*dhimma*) status. The leader is free also to refuse releasing them for money or exchange for Muslim prisoners.²⁷ If it is not possible to move their cattle to the land of Islam, he can order them slaughtered or burned along with the weapons, and whatever cannot be burned should be buried.²⁸

As for peace, al-Rāzī contended that the leader of the Muslims has the authority to conclude peace with the enemy, either for no money, for money paid to the Muslims by the enemies or by the Muslims to the enemies. The leader is also permitted to cancel the peace if he thinks doing so is better for the Muslims, provided he informs the enemies about the cancellation; al-Rāzī excepted though that if the enemies

²³ Al-Shaybānī, *Kitāb al-Siyar*, 100; idem, *The Islamic Law of Nations*, 91–2.

²⁴ Al-Rāzī, *Tuḥfat al-mulūk fī fiqh madhhab al-imām Abī Ḥanīfa al-Nu‘mān*, ed. ‘Abd Allāh N. Aḥmad (Beirut: Dār al-Bashā‘ir, 1997) 179.

²⁵ Al-Rāzī, *Tuḥfat al-mulūk*, 180.

²⁶ Al-Rāzī, *Tuḥfat al-mulūk*, 180–1.

²⁷ Al-Rāzī, *Tuḥfat al-mulūk*, 183.

²⁸ Al-Rāzī, *Tuḥfat al-mulūk*, 183.

committed an act of treachery, then the cancellation of the peace does not require informing them. He also argued that it is not permissible to sell the enemy weapons and horses, even during peacetime, although it is permissible to sell them food and clothes.²⁹ A guarantee of safety (*amān*) given by a free Muslim person to the enemy is valid, according to al-Rāzī, although the leader can cancel it. The guarantee of a Muslim prisoner, merchant or slave is not permissible, as well as one issued by a Muslim residing outside the abode of Islam.³⁰

Al-Rāzī also discussed the war against seditionist Muslims. He contended that they should be fought only if they initiate war. If they have a community they could go back to, then their wounded warriors must be killed, but their families and property are not to be taken as spoils of war.³¹

It is important to note that al-Rāzī stated the laws of war without any justification or support from Qur'ān or Ḥadīth, or any other source for that matter. Moreover, in some cases, his arguments agreed with his Ḥanafī forerunner al-Shaybānī, and in other cases did not, which show that he was not operating on the supposition that Ḥanafī law on war and peace was something fixed.

Mālikī law: Ibn Rushd (Averroes)

The famous Mālikī jurist and philosopher Ibn Rushd (d. 1198) also discussed the laws of war and peace. He divided his discussion into several categories. For instance, Ibn Rushd contended that war is a communal obligation,³² and its pretext is to call people to Islam.³³ Thus, he argued, the Muslims cannot fight an enemy unless they call them first to Islam, alleging that all jurists agree on this view, which is not true, as we saw earlier in the discussions of Abū Yūsuf and al-Shaybānī. Ibn Rushd acknowledged though that there is disagreement among jurists on whether the calling to Islam is to be repeated if the war is halted and later resumed, explaining that the disagreement resulted from what the Prophet said about this issue which contradicted what he once did.³⁴

Under the categories of 'those against whom war is waged' and 'Who to fight', Ibn Rushd argued that war is waged against all polytheists and quoted verse 8:39 from the Qur'ān in support of that: 'Fight them so that there will be no discord and the whole of religion belongs to God. If they desist, God sees best what they do.' He noted that jurist Mālik b. Anas (d. 795) – the eponym of the Mālikī school – made an exception for the Ethiopians and Turkic peoples on the basis of a prophetic ḥadīth. The purpose of the war against the People of the Book, Ibn Rushd contended, is to compel them 'to convert to Islam or pay the *jizya*-tax.' This condition is extended to the Zoroastrians, for the Prophet said they should be treated like the People of the Book. Otherwise, there is disagreement on all other groups; some jurists, including Mālik, accepted taking *jizya*-tax from them, while other jurists, including al-Shāfi'ī (d. 820) – the eponym of the Shāfi'ī school – insisted that the *jizya*-tax is not applicable except to the People of the Book and Zoroastrians.³⁵

There is something interesting about Ibn Rushd's argument that the People of the Book are to be fought until they either convert or pay the *jizya*-tax. This is a matter of disagreement among Muslim jurists. It must have been the context of medieval Spain that led him to take such a position that the Christians were

²⁹ Al-Rāzī, *Tuḥfat al-mulūk*, 181.

³⁰ Al-Rāzī, *Tuḥfat al-mulūk*, 182.

³¹ Al-Rāzī, *Tuḥfat al-mulūk*, 196.

³² Ibn Rushd, *Bidāyat al-mujtahid wa-nihāyat al-muqtaṣid*, ed. Muḥammad-Ṣubḥī H. Ḥallāq (4 vols., Cairo: Maktabat Ibn Taymīyya, 1995) 2: 329.

³³ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 342.

³⁴ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 342–3.

³⁵ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 331 and 347–8.

the enemies of the Muslims and Islam. Thus, whereas in the Near East, the pretext of the war against the People of the Book was generally the payment of the *jizya*-tax, in Spain, it was more complicated due to peculiar dynamics that prevailed there between Muslims and Christians.

Ibn Rushd noted the exception extended to the members of the powerful Christian tribe of Banū Taghlib, who were exempted by Caliph ʿUmar from *jizya*-tax and paid alms (*zakaṭ*) like the Muslims. This view was a point of agreement among major jurists such as Abū Ḥanīfa and al-Shāfiʿī.³⁶ Al-Shaybānī even designated a short section to discuss the exclusive rights of Banū Taghlib regarding taxation.³⁷

Similarly, with respect to the laws about the conduct of war, the views that Ibn Rushd presented reveal as well controversy and disagreement among Muslim jurists. For example, he contended that the leader of the Muslims has the authority to free, enslave or kill enemy hostages, release them on ransom, or impose on them the *jizya*-tax, and that there is an exception made for monks, based on prophetic ḥadīths, the practice (*sunnā*) of Caliph Abū Bakr (r. 632–634) and other reports. He asserted that captive enemies could not be killed if an assurance of safety (*amān*) has been granted to them. But who can grant such an assurance? Opinions vary from exclusively the leader of the Muslims, to someone authorized by the leader, to any free Muslim man, to a woman or even a slave; the assurance issued by a slave is rejected by Ibn Rushd.³⁸ He then acknowledged that there is no agreement on who among the enemy the Muslims can kill during combat aside from enemy fighters. Some jurists banned the killing of women, children, the elderly and the handicapped, while others allowed it.³⁹ These disagreements, according to Ibn Rushd, are caused by the fact that the verses of the Qurʾān that deal with these matters contradict each other, that the practice of Prophet Muḥammad is inconsistent, and that the Qurʾān and Sunna are also at variance.⁴⁰

Ibn Rushd also argued that Muslim scholars disagree regarding whether the killing of the enemy is justified on the grounds of their unbelief or their capacity to fight. Those who say it is the former (i.e., unbelief) allow the killing, irrespective of age, gender or condition. Those who say it is the latter (i.e., capacity to fight) only allow the killing of fighters.⁴¹ He made note of the view of Caliph Abū Bakr (r. 632–634) instructing Muslim fighters not to kill women, children or elderly, but then pointed as well to the view of the Prophet that the elderly are to be killed but not the young. Moreover, Ibn Rushd asserted that captured enemy combatants must not be tortured or maimed, but there is disagreement over burning them. There is equally a disagreement over the use of mangonels, and the type of damage the Muslims are allowed to inflict on the enemies' land, cattle and property.⁴²

Ibn Rushd also discussed the topic of truce, saying that Muslim scholars disagree over the conditions for it to happen – best interest (*maṣlaḥa*) or necessity (*ḍarūra*) – and what it implies – paying the enemy or being paid by the enemy. In his opinion, the disagreement is caused by a variance between the Qurʾān and Ḥadīth. There is also disagreement over the length of a truce; some put the maximum at three years, others at ten years.⁴³

In summary, Ibn Rushd realized that Muslim jurists did not agree on the laws of war and peace. The fact that there are serious contradictions within the Qurʾān, within the Ḥadīth, between the Qurʾān and Ḥadīth, and between these two foundational sources and the opinions and practices of early Muslim rulers and

³⁶ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 6.

³⁷ Al-Shaybānī, *Kitāb al-Siyar*, 157–8.

³⁸ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 332–6; and Ibn Qudāma, *al-Mughnī*, eds. Ṭaha M. al-Zaynī and Muḥammad Fāyid (10 vols., Cairo: Maktabat al-Qāhira, 1968–1970), 9: 343–4.

³⁹ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 336–9.

⁴⁰ Such statements are regularly repeated by Ibn Rushd: see, for example, Ibn Rushd, *Bidāyat al-mujtahid*, 2: 337–8.

⁴¹ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 339.

⁴² Ibn Rushd, *Bidāyat al-mujtahid*, 2: 339–41.

⁴³ Ibn Rushd, *Bidāyat al-mujtahid*, 2: 345–6.

scholars allowed the jurists to reach different positions, often necessitated by their own respective historical contexts. In other words, the conflict within the foundational sources, within the historical practice, and between the sources and the historical practice allowed the jurists to tolerate a wide diversity of opinions on the laws of war and peace. For the most part, Ibn Rushd did not prefer one group to the others, and gave them all the same level of authority. He often accepted the contradictions and did not try to resolve them. The discussion of Ibn Rushd shows us the complexity of Islamic law in terms of its multiple sources (textual and personal), its methodology, and its inconclusive position on many issues, especially war and peace.

Furthermore, Ibn Rushd belonged to the period when Islamic law reached a level of maturity and stability, whereas Abū Yūsuf and al-Shaybānī were from the period when Islamic law was taking its shape. This explains why they were more assertive in their opinions and did not always bother to list the views of other scholars, whereas he was compelled to convey the disagreement among jurists and explain the complexity of the laws of war and peace in Islam as varied and incoherent. This tendency to accept the absence of a clear legal framework for war and peace is encountered in most later jurists, although some tried to impose one, as we saw above with the Ḥanafī jurist al-Rāzī – who gave precise pronouncements on the laws of war and peace and did not bother to convey the complexity of the Islamic legal tradition and the inherent disagreement of the jurists on the laws of war and peace – and with Ibn ‘Abd al-Salām as we will see in the following section.

Shāfi‘ī Law: ‘Abd al-Jabbār & Ibn ‘Abd al-Salām

The Mu‘tazilī theologian ‘Abd al-Jabbār (d. 1024), who was also a notable jurist of Shāfi‘ī law and chief judge of the city of Rayy (977–995) for the Būyids, expressed some views that relate to war and peace, which help us understand the diversity among Shāfi‘īs. In his discussion of ‘Commanding Right and Prohibiting Wrong’ (*al-amr bi-l-ma‘rūf wa-l-nahī ‘an al-munkar*), ‘Abd al-Jabbār argued that ‘prohibiting all types of wrong is a mandatory duty because they are all evil.’⁴⁴ He then explained the logic for that:

It should be aspired, whenever possible, to reach a situation where the wrong does not occur easily and develop to something worse. For the goal is simply to eliminate the wrong. If the good can be realized through easy measures, then undertaking the hard measures is not permissible. Hence, the glorious and sublime God said: ‘If two groups of believers fight each other, make peace between them. If one group transgresses against the other, fight the transgressing group until it returns to the judgment of God’ (Q. 49:9). Therefore, it is incumbent to prohibit the wrong if it is determined that it does not lead to increase in sins and commitment of a greater harm. If it is so determined (that it leads to a greater harm), it is not permissible, and abstaining from it is more appropriate.⁴⁵

Thus, one can extrapolate that the pretext of war is to end or control evil. Yet, it is permissible only if it leads to ameliorating the situation to something better. If it leads to causing worse harm, then it is not permissible. ‘Abd al-Jabbār even absolved the individual from the duty of forbidding the wrong if it causes him any kind of individual harm: ‘If the person is able to do it and is not fearful for his person or possessions, and is convinced it will be accepted from him, then the duty is incumbent on him. In that case, if he does not pursue it, he becomes sinful.’⁴⁶

⁴⁴ ‘Abd al-Jabbār, *Kitāb al-Uṣūl al-khamsa*, in Daniel Gimaret, ‘Les Uṣūl al-Ḥamsa du Qādī ‘Abd al-Ġabbār et leurs commentaires’, *Annales Islamologiques* 15 (1979) 79–96, at 82.

⁴⁵ ‘Abd al-Jabbār, *Kitāb al-Uṣūl al-khamsa*, 82.

⁴⁶ ‘Abd al-Jabbār, *Kitāb al-Uṣūl al-khamsa*, 94.

It is clear in this short examination that ‘Abd al-Jabbār looked at the issue from the perspective of two important and interconnected questions: human agency/responsibility, and good versus evil. In other words, he blended law and theology.

A different take is encountered in *Aḥkām al-jihād (Laws of Jihad War)* by the celebrated Shāfi‘ī jurist Ibn ‘Abd al-Salām (d. 1262), who flourished during the late Ayyūbid and early Mamluk periods. Ibn ‘Abd al-Salām almost exclusively based his views on a few verses from the Qur’ān, except in a few instances where he cited a practice of the Prophet Muḥammad. This does not mean that he passively deferred to the foundational texts and followed their dictate on war and peace. It was rather that he harnessed specific verses and prophetic traditions and deployed them to lend support for his views, thus ignoring other verses and traditions that countered them.

Ibn ‘Abd al-Salām contended that the Prophet’s instruction to his men when he dispatched them for war was: ‘Wage war in the name of God and in the path of God. Fight those who disbelieve in God and do not conduct yourselves brutally, do not commit treachery, do not mutilate the bodies, and do not kill infants,’ which for him meant that they should ‘command right and prohibit wrong.’⁴⁷ Ibn ‘Abd al-Salām did not explain what exactly commanding right and prohibiting wrong entails in this case, although one can surmise that he meant the enemies’ unbelief and the threat they pose to the Muslims.⁴⁸ He then argued that the unbelievers should be called to Islam, which he considered an act of charity to them, for that brings them out of unbelief to belief, thus out of God’s wrath and into God’s mercy.⁴⁹

In what we might consider as the purpose of war, Ibn ‘Abd al-Salām contended that preparation for war seeks to frighten the unbelievers and he quoted verse 8:60 in support of that: ‘Whatever you expend in the cause of God will be returned in full to you, and you shall not be wronged’. He then commented that if the enemies knew that the Muslims were ready to attack them, they would fear them and cease their hostility against them.⁵⁰ In other words, the Muslims’ preparation for war could be a deterrent.

He also argued that one of the objectives of war is to free captive Muslims:

Saving Muslim captives from the hands of the unbelievers is among the loftiest acts of religious piety, for a notable early scholar once said: ‘If they capture a single Muslim person, it is incumbent on us all to keep fighting them until we free that person or annihilate them. How about if they capture a large crowd of Muslims!’⁵¹

Ibn ‘Abd al-Salām then cited two verses which he argued show God teaching the believers how to fight: ‘Strike above the necks, and strike their every finger’ (Q. 8:12), and ‘When you encounter the unbelievers, strikes to the necks it shall be’ (Q. 47:4). He then said: ‘God taught his servants how to fight his enemies. He ordered them to strike at their necks because it severs their rancor. Moreover, each finger is to be cut because it impedes them from fighting.’⁵² Ibn ‘Abd al-Salām allowed that the Muslims destroy the abodes of their enemies and cut their trees, and cited for that three verses, including ‘They demolished their homes with their own hands and the hands of the believers’ (Q. 59:2) and referenced the Prophet’s

⁴⁷ Ibn ‘Abd al-Salām, *Aḥkām al-jihād wa-fada’iluh*, ed. Nazīh Ḥammād (Jadda: Dār al-Wafā’, 1986) 76.

⁴⁸ For a thorough discussion on how Muslim scholars across the centuries have understood the duty of commanding right and prohibiting wrong, see Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (New York: Cambridge University Press, 2000).

⁴⁹ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 89.

⁵⁰ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 91–2.

⁵¹ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 97.

⁵² Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 100. Both verses were cited by Ibn ‘Abd al-Salām partially.

order to cut and burn the palm trees of the al-Nadir clan in Medina.⁵³ The destruction of homes and burning of trees, according to Ibn ‘Abd al-Salām, humiliate the enemies and weaken their resolve.⁵⁴ In this respect, enemy fighters can be killed, captured or sold into slavery, their wealth confiscated, and their women and children enslaved. An additional objective for the destruction and burning is to frighten other enemies who would renounce fighting the Muslims out of fear that a similar fate might befall them too.⁵⁵

With respect to peace, Ibn ‘Abd al-Salām argued that the Muslims should not seek peace, and cited for that verse 47:35: ‘Be not faint-hearted and call for peace when you have the upper hand and God is on your side.’⁵⁶ The only exception is if the enemies were to ask for peace and it is advantageous to Islam, and he quoted verse 8:61 in support of that (‘Should they incline to peace, incline to it also, and put your trust in God’).⁵⁷ However, the Muslims should not honor the peace if they suspected their enemies were using it as a ploy against them, and cited for that verses 8:57–58 (‘If you fear treachery from a group, renounce your compact with them ...’).⁵⁸ His explanation was that:

To call for peace is damaging to Islam and also a humiliation and display of weakness. It is not permissible unless in the condition of dire necessity (*hāl al-iḍṭirār*) and to repel something that the Muslims cannot withstand. For the Prophet agreed to do the peace of Hudaibīyya (with the Meccans) in return for paying (them) one third of the crop of dates of Medina. If a voracious dog attacks someone, there is no harm to distract it and repel its danger with a loaf of bread.⁵⁹

Similarly, revoking the peace is meant to create a situation of parity, whereby the Muslims are not left with the situation of fearing their enemy while the enemy is assured of the Muslims honoring the peace.⁶⁰

As for capturing enemy fighters, it is best, according to Ibn ‘Abd al-Salām, to be delayed until the war is over. In other words, the Muslims should not seek to capture enemy combatants, but rather they should fight them ruthlessly, as verse 47:4 stipulates. Interestingly, Ibn ‘Abd al-Salām left out the last part of verse 47:4, which instructs that deciding the fate of enemy fighters ‘captured during the battle’ is done after the war is over, which does not accord with his argument.⁶¹

The distinction between ‘Abd al-Jabbār and Ibn ‘Abd al-Salām is very evident. The former approached the question from a theological angle and was mostly concerned with where the individual stands in relation to fighting evil and the consequences of that. Ibn ‘Abd al-Salām was different in that his focus was on war and its impact on the Muslims as a collective and his views were shaped by what he considered the humiliations caused by the Crusaders and the Mongols.⁶² He was also very uncompromising and fanatic in his thinking about war and peace, and even though he was a contemporary of al-Rāzī, the two diverged on many issues, which show that the same challenge (the Crusader and Mongol invasions) gave rise to diverse legal opinions about war and peace by contemporary jurists.

Hanbalī Law: Ibn Qudāma & Ibn Taymīyya

⁵³ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 101. The verse here too is quoted partially.

⁵⁴ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 112.

⁵⁵ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 113.

⁵⁶ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 107.

⁵⁷ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 108.

⁵⁸ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 109–10.

⁵⁹ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 113.

⁶⁰ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 113.

⁶¹ Ibn ‘Abd al-Salām, *Aḥkām al-jihād*, 111.

⁶² It is relevant to note here that Ibn ‘Abd al-Salām, who flourished in Damascus and later in Cairo, wrote his *Aḥkām al-jihād* before the Mongols sacked Baghdad (in 1258) and proceeded to attack Syria and threaten Egypt in 1260–1261.

The great Ḥanbalī jurist and theologian Ibn Qudāma (d. 1223) of Damascus wrote an extensive exposition on the laws of war and peace in his massive work on Sharī‘a law. He argued that war is to be waged once a year unless there are unavoidable impediments that force the Muslims not to do it or if their enemy ‘has a positive disposition towards Islam, and the Muslims might seek to convert them if they delay war.’⁶³ Each group of Muslims should fight the enemies close to them.⁶⁴ Ibn Qudāma contended that the People of the Book and the Zoroastrians are to be fought in order to assure that they pay the jizya-tax and there is no requirement to call them to Islam because they already received a call. However, if groups exist beyond the ones Muslims know and have never been called before, then fighting them requires calling them to Islam prior to war. Idol worshippers, however, who have not been called before are to be called to Islam before the war.⁶⁵ He acknowledged though that jurists disagree as to whether the Muslims can accept the jizya-tax from unbelievers other than the People of the Book and Zoroastrians. He said that Ibn Ḥanbal (d. 855) – the eponym of the Ḥanbalī school – and Abū Ḥanīfa allowed the jizya-tax to be accepted from all unbelievers except idol worshippers from among the Arabs. He added though that the dominant view within the Ḥanbalī school and that of al-Shāfi‘ī is that only conversion to Islam is accepted from these types of unbelievers but never the jizya-tax. Mālik’s view, according to Ibn Qudāma, was that everyone could pay the jizya-tax except the unbelievers of Quraysh.⁶⁶

It is not permissible, according to Ibn Qudāma, to burn the enemy with fire. He contended that even though it was a practice used by Caliph Abū Bakr during the Ridda Wars (632–633), it is no more applicable.⁶⁷ There is disagreement, however, if the Muslims can use fire projectiles against an enemy town. Those who permit it do so on condition that this is the only option the Muslims have for taking the targeted town. Also, it is legal for the Muslims to attack at night while the enemy is sleeping, but it is not permissible to kill women and children intentionally unless they fight, and the same applies to the crippled, blind, monks, and farmers.⁶⁸ There is disagreement though regarding the elderly.⁶⁹ If the enemies use their women and children as human shields, then it is fine to purposefully kill them. There is disagreement, however, if the enemies use Muslims as human shields: some allow the killing of the Muslims in order to make sure the war is not impeded, others do not.⁷⁰ Those who allow it are divided concerning the penalty that must be paid: some prescribe the same penalty for the accidental death of a Muslim, others consider it as part of war casualties and do not impose any penalties.⁷¹

Aside from these laws, there is disagreement regarding the damage that can be done to the enemy land. Some allow burning bee hives, killing of cattle and destroying trees and vegetation, others prohibit altogether such acts.⁷²

Any Muslim can grant an assurance of safety (*amān*) to the enemy, according to Ibn Qudāma, and this must be respected, although there is a disagreement regarding the assurance issued by a slave. The jurists who are against it only allow it if the slave was granted permission to fight. There is also disagreement about the assurance issued by a mature boy: some allow it, others do not.⁷³

⁶³ Ibn Qudāma, *al-Mughnī*, 9: 198.

⁶⁴ Ibn Qudāma, *al-Mughnī*, 9: 202.

⁶⁵ Ibn Qudāma, *al-Mughnī*, 9: 210–11.

⁶⁶ Ibn Qudāma, *al-Mughnī*, 9: 212–13.

⁶⁷ Ibn Qudāma, *al-Mughnī*, 9: 286–7.

⁶⁸ Ibn Qudāma, *al-Mughnī*, 9: 287–8 and 311–13.

⁶⁹ Ibn Qudāma, *al-Mughnī*, 9: 311–12.

⁷⁰ Ibn Qudāma, *al-Mughnī*, 9: 288.

⁷¹ Ibn Qudāma, *al-Mughnī*, 9: 289.

⁷² Ibn Qudāma, *al-Mughnī*, 9: 289–92.

⁷³ Ibn Qudāma, *al-Mughnī*, 9: 241–2.

It is up to the leader of the Muslims to determine the fate of prisoners of war. For men, he can order them killed, release them without any payment or for a ransom, exchange them with Muslim captives, or sell them as slaves. Captive women and children, however, are not allowed to be killed.⁷⁴ If a man prisoner converts to Islam, he cannot be killed.⁷⁵ Ibn Qudāma noted though that the Muslim warrior has the right to kill a captive man if he arrests him and before he brings him to the leader, but he does not have the right to kill the prisoner of another Muslim.⁷⁶

During the division of spoils of war, Ibn Qudāma alleged that it is not permissible to separate a captive mother from her young child. There is disagreement though regarding the separation of a captive father and his child, and a captive mother and her child who reached puberty.⁷⁷ There is disagreement as well regarding the separation of siblings and cousins.⁷⁸

Regarding truces, Ibn Qudāma argued that a truce with the enemy is allowed provided it is in the best interest (*maṣlaḥa*) of the Muslims and its term is specified, although there is no agreement if the maximum limit is ten years or if it can be more than ten. He added that those who allow more than ten years justify it by recourse to the notion of *maṣlaḥa*, an opinion which he endorsed. Interestingly, he likened the renewal of peace to the renewal of rent contracts; thus, peace can be continuously renewed if the Muslims choose so.⁷⁹

Ibn Qudāma also maintained that the truce might either require the enemy to pay or not to pay a specified sum of money to the Muslims.⁸⁰ As for money paid by the Muslims to the enemy, he contended that: ‘It is only permissible if necessity (*ḍarūra*) requires it, such as fear that war might lead to Muslims being killed or taken hostages. For paying money to the enemy is a humiliation, which might be tolerated in order to avoid a worse humiliation, such as killing, imprisonment, or enslavement which leads to unbelief.’⁸¹ Thus, Ibn Qudāma invoked the two notions of *maṣlaḥa* and *ḍarūra* to allow the leader of the Muslim to go beyond the strict dictate of existing Sharī‘a laws.

Because truces are concluded between groups, it is up to the leader or the one he designates to enter into a truce with the enemy. Those done without the permission of the leader are not legitimate, Ibn Qudāma argued. Once the truce is signed, the leader is required to honor it and not violate it unless the enemy renounces it, in which case he is required to inform them about their violation before he can proceed to make war against them.⁸²

Several decades later, the celebrated Ḥanbalī jurist and theologian Ibn Taymīyya (d. 1328) expressed a less nuanced view about jihad than the one we see with Ibn Qudāma. Ibn Taymīyya justified war on the grounds that ‘Almighty God had allowed the killing of people for the well-being of humanity, as he said “driving people to unbelief is worth than killing” (Q. 2:217), meaning that killing, even though it might involve sins and corruption, however, unbelief is much more sinful and corrupting.’⁸³ In two legal opinions (*fatwas*) on fighting the Shī‘ī inhabitants of Mount Lebanon, Ibn Taymīyya contended that the

⁷⁴ Ibn Qudāma, *al-Mughnī*, 9: 220–1 and 310–11.

⁷⁵ Ibn Qudāma, *al-Mughnī*, 9: 222.

⁷⁶ Ibn Qudāma, *al-Mughnī*, 9: 225.

⁷⁷ Ibn Qudāma, *al-Mughnī*, 9: 264–5.

⁷⁸ Ibn Qudāma, *al-Mughnī*, 9: 266.

⁷⁹ Ibn Qudāma, *al-Mughnī*, 9: 297.

⁸⁰ Ibn Qudāma, *al-Mughnī*, 9: 296–7.

⁸¹ Ibn Qudāma, *al-Mughnī*, 9: 297–8.

⁸² Ibn Qudāma, *al-Mughnī*, 9: 298–9.

⁸³ Ibn Taymīyya, *Sharḥ Kitāb al-Siyāsa al-shar‘īyya li-shaykh al-Islām Ibn Taymīyya*, ed. Ṣāliḥ ‘U. al-Laḥḥām (Amman: al-Dār al-‘Uthmānīyya and Beirut: Dār Ibn Ḥazm, 2004) 371.

war against them is an utmost form of obedience and fulfillment of religious obligation,⁸⁴ because these people are ‘schismatic apostates and errant hypocrites, who dissented from the Sunna of the Prophet and the consensus of the Muslims, and strayed from Sharī‘a and the obedience (to Muslim rulers).’⁸⁵

One issue Ibn Taymīyya raised in one of his fatwas, and which we rarely come across in legal manuals about the laws of war, relates to post-war settlement, specifically his requirement that these Muslim apostates be reeducated about Islam:

The military conquest is only complete when the Sultan issues orders to eradicate all forms of religious corruption and enforce Sharī‘a in their land The religious obligations and laws must be imposed on them: holding Friday and communal prayers, teaching them the Qur’ān, appointing preachers and callers for prayers like in other Muslim towns, instructing them about the prophetic Ḥadīth, spreading among them Islamic education, and enforcing the penalties on those who commit acts of apostasy and religious hypocrisy according to Sharī‘a.⁸⁶

Thus, the post-war settlement necessitates that these Muslim apostates be re-Islamized.

The doctrinal views of Ibn Taymīyya blend theology and law, and are to be contextualized in the challenging experiences of the Crusader and Mongol invasions (11th–14th century), a period which witnessed a revival of jihad preaching and propaganda,⁸⁷ and by extension the discussion about jihad as a duty and the laws of war and peace.

It is worth noting too that Ibn Taymīyya was involved in at least one military campaign against the Shī‘īs and Druzes of Mount Lebanon, whose threat he saw as coming from their unbelief as well as their disposition to ally with the enemies of the Sunnī Muslims. The fatwas he issued against them had direct role in legalizing the Mamluk military campaign against Mount Lebanon in the early 1300s.⁸⁸ They were also regularly invoked in the course of the sixteenth and seventeenth centuries when local Ottoman governors in Damascus led campaigns against the Druzes.⁸⁹

Twelver-Shī‘ī Law: Al-Kulaynī & al-Ṭūsī

The discussion of war in Twelver Shī‘ī law is largely similar to that in Sunnī law. The only major difference is that medieval Shī‘ī scholars assigned an exclusive role to the Shī‘ī Imam to define war and administer its execution. In this respect, their views were largely based on the historical practices and opinions of their former Imams, rather than as generated out of their own historical moment and need. For instance, in his seminal work of Twelver Shī‘ī jurisprudence, *Kitāb al-Kāfi (The Sufficient)*, al-Kulaynī (d. 941) quoted a letter allegedly written by the fifth Shī‘ī Imam Abū Ja‘far Muḥammad al-Bāqir (d. ca. 735) to an unnamed Umayyad caliph, in which al-Bāqir discussed jihad, its motives and objectives, and its conduct. For example, al-Bāqir argued that God imposed jihad in order to safeguard the borders of

⁸⁴ Ibn Taymīyya, *Majmū‘ al-fatāwā*, ed. Muṣṭafā ‘Atā (22 vols., Beirut: Dār al-Kutub al-‘Ilmīyya, 2000) 19 (pt. 35): 77.

⁸⁵ Ibn Taymīyya, *Majmū‘ al-fatāwā*, 16 (pt. 28): 180.

⁸⁶ Ibn Taymīyya, *Majmū‘ al-fatāwā*, 16 (pt. 28): 183.

⁸⁷ On this, see Suleiman A. Mourad and James E. Lindsay, *The Intensification and Reorientation of Sunnī Jihad Ideology in the Crusader Period: Ibn ‘Asākir (1105–1176) of Damascus and His Age; with an edition and translation of Ibn ‘Asākir’s The Forty Ḥadīths for Inciting Jihad* (Leiden: Brill, 2013), and Kenneth A. Goudie, *Reinventing Jihad: Jihad Ideology from the Conquest of Jerusalem to the End of the Ayyubids (c. 492/1099–647/1249)* (Leiden: Brill, 2019).

⁸⁸ Suleiman A. Mourad, ‘Why Did Ibn Taymīyya Hate Mount Lebanon? An Inquiry into the Medieval Ideology of Muslim-on-Muslim Violence’ in Abdul Rahim Abu Husayn, Tarif Khalidi and Suleiman A. Mourad (eds.), *In the House of Understanding: Histories in Memory of Kamal S. Salibi* (Beirut: American University of Beirut Press, 2017) 373–88.

⁸⁹ Mourad and Lindsay, *Intensification and Reorientation*, 116.

Muslim territories, to summon people to obey and worship God, or to levy jizya-tax from those who do not convert.⁹⁰ In another ḥadīth attributed by al-Kulaynī to Imam ‘Alī (d. 661), he said: ‘God imposed the duty of jihad ... because the world and religion cannot be straightened except by it.’⁹¹

The two views about the purpose of war and what constitutes a right war are very important for our deliberation. War is a necessary tool to make the world better, but only if it intends to achieve the kind of objectives that al-Bāqir identified: protect Muslim lands, convert others to Islam, or levy the jizya-tax.

Al-Kulaynī then identified three types of wars. One applied to the past, during the time of Muḥammad. It was a war against Arab polytheists, who had no choice but either to be killed, convert to Islam or be enslaved. The second type of war is against the people of protection (*dhimma*) status. Those among them who live in Muslim lands must, according to al-Kulaynī, either pay the jizya-tax or be killed (one assumes here that their status as *dhimmis* meant they have already rejected to convert to Islam). If they pay the jizya-tax, then they are safe and Muslim men can intermarry with them. As for those who live outside the land of Islam (what Muslim jurists often called *dār al-ḥarb* or territory of potential hostilities), Muslims cannot intermarry with them, and their choice is either to move to the land of Islam and pay the jizya-tax, or be killed. The third type of war is against the non-Arab polytheists, such as the Turkic and Daylam peoples and the Khazars (i.e., the inhabitants of historical Central Asia, northwest Iran and the Caucasus). Their only choice is either to convert to Islam or be killed. Al-Kulaynī added a fourth type of war, albeit it is suspended, against the people of sedition and false exegetes (*ahl al-baghy wa-l-ta`wīl*),⁹² which clearly signify seditionist Muslims. He also repeated several times that the warrior must first meet the requirements and fulfill the duties that God has imposed on the believers before he could take part in jihad.⁹³ He quoted a ḥadīth attributed to Imam al-Ḥusayn (d. 680) saying that war except under a just Imam is forbidden.⁹⁴

Al-Kulaynī also addressed the conduct of war. On this topic, he sometimes provided contradictory views. He quoted Imam ‘Alī saying that the Prophet Muḥammad prohibited poisoning the wells in the lands of the polytheists,⁹⁵ and that when waging war, the Muslims should not be excessive or mutilate the corpses, kill old people, children or women, or cut trees unless there is necessity for that.⁹⁶ But in a ḥadīth attributed to Imam Ja‘far al-Šādiq (d. 765), he is said to have allowed the burning of the enemy’s town with its inhabitants, drowning it, or attacking it with mangonels even if this led to the death of women, children, old people, merchants and Muslim captives. But al-Šādiq did not approve directly fighting against non-combating women, children, old people and the handicapped, because these groups are exempt from the jizya-tax.⁹⁷

Captive enemy combatants, according to al-Kulaynī, are to be treated according to two classifications. The first classification is if they were caught during the war, the Imam has the choice to kill them or amputate their limbs and let them die. The second classification is if they were caught after the war is over, the Imam has the right to free them, accept a ransom for their freedom, or enslave them.⁹⁸

⁹⁰ Al-Kulaynī, *al-Kāfi* (8 vols., Beirut: Manshūrat al-Fajr, 2007) 5: 5.

⁹¹ Al-Kulaynī, *al-Kāfi*, 5: 7.

⁹² Al-Kulaynī, *al-Kāfi*, 5: 8–9.

⁹³ Al-Kulaynī, *al-Kāfi*, 5: 13.

⁹⁴ Al-Kulaynī, *al-Kāfi*, 5: 15 and 17. For a discussion about the Imam and his legitimacy, see Hossein Modarressi, *Crisis and Consolidation in the Formative Period of Shi‘ite Islam: Abū Ja‘far ibn Qiba al-Rāzī and His Contribution to Imāmīte Shi‘ite Thought* (Princeton: Darwin Press, 1993) 3–18.

⁹⁵ Al-Kulaynī, *al-Kāfi*, 5: 18.

⁹⁶ Al-Kulaynī, *al-Kāfi*, 5: 17.

⁹⁷ Al-Kulaynī, *al-Kāfi*, 5: 18.

⁹⁸ Al-Kulaynī, *al-Kāfi*, 5: 20.

If the Muslims are fighting seditionist Muslims (*ahl al-baghy*), they should not chase them or kill their captives and wounded, provided they do not have a base to go back to in order to regroup with their companions. But if they have companions with whom they could regroup, then the captives must be killed, the runaway chased and the wounded slain.⁹⁹

Al-Kulaynī was clear though that any Muslim can give an assurance of safety (*amān*), including the slave,¹⁰⁰ and that no enemy can be fought unless they are first called to Islam.¹⁰¹

These views are shared by the great Twelver Shī'ī scholar al-Ṭūsī (d. 1068), who considered jihad a communal obligation. He argued that every person who did not accept Islam and refused to admit the veracity of the two *shahādas* (statements of faith) must be fought. According to al-Ṭūsī, they divide into two groups. The first group includes Jews, Christians and Zoroastrians, who must be fought in order to accept paying the jizya-tax and abide by the conditions of the protection (*dhimma*) status. The second group comprises all others, who must be fought until either they convert and proclaim the *shahādas* and perform all the religious obligations, or they are killed, their property is confiscated and their families are enslaved. Under no circumstances would the jizya-tax apply to them.¹⁰²

Al-Ṭūsī contended that it is the Imam who calls for war and oversees its conduct, or it must be someone else delegated by the Imam.¹⁰³ If the Imam, or his delegate, is not present on the battlefield, it is not permissible to wage jihad against an enemy under the leadership of an illegitimate imam and those who insist on doing it commit a sin.¹⁰⁴

Al-Ṭūsī added a separate category for seditionist Muslims (*ahl al-baghy*), who he defined as any Muslim groups who refuse to accept the legitimate Imam and rebel against him. It is the Imam exclusively who gives permission to fight them, and once the war against them starts, it can only stop either by their death or by total repentance.¹⁰⁵

The views of al-Kulaynī and al-Ṭūsī on war actually bridge law and theology in that it is clear that war is tied to the Imam; he decides if it is needed and oversees its conduct. In other words, a war is legal if it is led by the Imam or someone designated by him. Every other war is therefore illegal. However, a serious question arises about their applicability because at the time of al-Kulaynī and al-Ṭūsī, the twelfth Imam was in occultation (*ghayba*),¹⁰⁶ and therefore not present. One could argue that at the time of al-Kulaynī, the Imam was in the 'minor occultation' phase (i.e., hiding but in contact with his deputies), and there were deputies of him in the world. This, however, does not apply to the time of al-Ṭūsī and the 'major occultation' when the Imam was no more in contact with any one. Was this, therefore, a mere theoretical exercise on the part of Shī'ī jurists (i.e., the laws are only to be activated when the twelfth Imam returns)? It could partly be the case, but we should not ignore the fact that Twelver Shī'ī jurists were often thinking backward to the time when their Imams led wars and got involved in rebellions. In other words, the issue

⁹⁹ Al-Kulaynī, *al-Kāfī*, 5: 20–1.

¹⁰⁰ Al-Kulaynī, *al-Kāfī*, 5: 18–19.

¹⁰¹ Al-Kulaynī, *al-Kāfī*, 5: 22–3.

¹⁰² Al-Ṭūsī, *al-Iqtisād fīmā yajib 'alā al-'ibād*, ed. Muḥammad Qāsim al-Mūsawī (Qumm: Markaz Nūr al-Anwār, 2009) 597–9; and *al-Nihāya wa-nukatuhā* (3 vols., Qumm: Mu'assasat al-Nashr al-Islāmī, 1991) 2: 6–7.

¹⁰³ Al-Ṭūsī, *al-Iqtisād*, 597 and 599; and *al-Nihāya*, 2: 5.

¹⁰⁴ Al-Ṭūsī, *al-Nihāya*, 2: 5.

¹⁰⁵ Al-Ṭūsī, *al-Iqtisād*, 601–2; and *al-Nihāya*, 2: 11–12.

¹⁰⁶ On the occultation in Twelver Shī'ism, see Najam Haider, *Shī'ī Islam: An Introduction* (New York: Cambridge University Press, 2014), chapter 7.

was partly at least shaped by what the Imams did in the past and their indisputable divine right, rather than whether there was actually an Imam when a given jurist expressed his views.¹⁰⁷

The Question of Rebellion

Rebellion is a feature of intra-Muslim dynamics that we come across very early on in Islamic history. The caliphate of ‘Uthmān (r. 644–656) saw its first manifestation, when a group of dissatisfied Muslim subjects (largely for political reasons) rebelled and killed him in 656, which led to the first civil war. ‘Alī, ‘Uthmān’s successor, spent his entire reign fighting off challengers, and he was killed in 661 by a group of former supporters who did not agree with his stance on the war – the Battle of Siffin in 657 and its settlement – against his opponents led by Mu‘āwiya, who was then governor of Syria. Those rebels came to be known as the Khawārij. Their religious slogan was ‘no rule except God’s’ (*lā ḥukm illā li-llah*), and that God’s dictates are exclusively communicated via the Qur’ān.

The Khawārij justified their assassination of ‘Alī on the grounds that he committed an act of unbelief by accepting to settle the dispute with Mu‘āwiya through arbitration rather than war. In other words, ‘Alī made ‘somebody other than God the judge in a case already settled by God,’¹⁰⁸ thus becoming a sinner (*fāsiq*) as verse 5:47 stipulated: ‘Whoso judges not in accordance with what God revealed, these are the sinners’.¹⁰⁹ The Khawārij were specifically referencing verse 49:9 which states:

If two groups of believers fight each other, make peace between them. If one group transgresses against the other, fight the transgressing group until it returns to the judgment of God. If it returns, settle the dispute between them in justice and be fair: God loves those who are fair.

Thus, ‘Alī in their opinion committed an act of unbelief by refusing to pursue war against the transgressors, and they killed him.¹¹⁰ One surmises from this that, for the Khawārij, fighting seditionist Muslims is an obligation whose objective is to assure unquestionable obedience to God and God’s judgement. Moreover, the Khawārij observed certain laws for war and the treatment of seditionist Muslims:

If they reject God’s truth, preferring blindness to guidance and separation from the Muslims to union with them, we separate from them and fight them till they return to God’s command or perish in their error. But we do not hold that they should be classified as idolaters so as to make it lawful for us to enslave them, kill their offspring, treat their property as booty, or sever relationships of inheritance with them.¹¹¹

It is clear, therefore, that seditionist Muslims are not to be treated like idolaters, especially when it comes to post-fighting treatment.

The Khawārij were not the only ‘rebels’ in Islam, albeit they were the most notorious. As noted earlier, Mu‘āwiya came to power through a rebellion against ‘Alī, which resulted in the establishment of the Umayyad dynasty. Umayyad power, however, was never stable, as they had to fend off several uprisings

¹⁰⁷ This problem led Twelver Shī‘ī jurists to suspend the duty of jihad. It was reauthorized with the rise of the Safavids in the fifteenth and sixteenth centuries.

¹⁰⁸ Sālim ibn Dhakwān, *Epistle*, in Patricia Crone and Fritz Zimmermann (eds.), *The Epistle of Sālim Ibn Dhakwān* (Oxford: Oxford University Press, 2001) 92–3. The *Epistle* is one of the earliest documents by a member of the Khawārij group, and was written in the second half of the eighth century.

¹⁰⁹ Sālim ibn Dhakwān, *Epistle*, 94–5.

¹¹⁰ Sālim ibn Dhakwān, *Epistle*, 92–3.

¹¹¹ Sālim ibn Dhakwān, *Epistle*, 132–3.

by many groups. One of those uprisings resulted in the killing of al-Ḥusayn (grandson of Muḥammad, and third Imam in Shī‘ism) at Karbala in 680 by an Umayyad army; even though technically the killing was meant to preempt al-Ḥusayn from leading a rebellion against them. Then came the existential challenge to the Umayyads posed by Ibn al-Zubayr and the Zubayrids in Arabia, Iraq and elsewhere between 683 and 692. And we should not forget the ultimate demise of the Umayyads in 750 when they were overthrown by the ‘Abbāsīd revolution.¹¹²

The issue is not to enumerate every rebellion, in as much as to point out the reality that rebellions formed a constant feature of Islamic history, especially in the first centuries.¹¹³ Nevertheless, the main question that relates to this chapter is how did Muslim jurists comment on the legitimacy of rebelling or lack thereof?

The Khawārij do not represent a mainstream Muslim group; they were treated in the medieval literature as outcasts. But as noted earlier, they considered defiance of God’s commandments as an act of unbelief, which necessitated the true believers to fight seditionist Muslims until they recant or perish. This view is not shared by Sunnī or Shī‘ī jurists, who generally did not approve of rebellion and considered it as an act that causes injustice to the Muslim community; hence the popular name for rebels is *ahl al-baghy* (literally, people of sedition). Although, there are some fine distinctions, and a few exceptions.

Sunnī jurists in general rejected rebellion, albeit they were open to it if it could be carried out peacefully. Al-Ghazālī (d. 1111), for instance, considered that the system of religion is impossible to establish unless people obey the existing ruler (*imām*).¹¹⁴ He accepted the removal of the ruler if he does not meet all the requirements for leadership (*imāma*), provided ‘the removal does not cause bloodshed (*fitna*) and war.’ But ‘if war is the only way to remove the leader, then,’ al-Ghazālī contended, ‘obedience to him becomes obligatory and his leadership is legal.’¹¹⁵

Twelver Shī‘ī jurists shared a similar view, although it was presented in the context of dissimulation (*taqīyya*) against unjust Muslim rulers. According to al-Ṭūsī, ‘dissimulation is obligatory and must not be revoked until the Twelfth Imam, peace on him, returns. Whoever revokes dissimulation before the return of the Imam rebels against the religion of God and the Imams, thus disobeying God, the Prophet and the Imams, peace on them.’¹¹⁶ In support of his view, al-Ṭūsī invoked verse 3:28: ‘Let not the believers take the unbelievers as allies in preference to believers. Whoso chooses this does not believe in God – unless you do that out of fear (*taqīyya*) of them.’¹¹⁷ He added as well other ḥadīths by several Imams, including one attributed to Ja‘far al-Šādiq, saying: ‘Deceit towards a fellow believer is an act of unbelief. However, towards a Muslim hypocrite in his domain, it is an act of worship.’¹¹⁸

Interestingly, there is a subtle distinction in that Sunnī jurists considered as rebellion any act of group insubordination to the existing Sunnī ruler,¹¹⁹ whereas Twelver Shī‘īs defined a rebel as someone who revolted against a ‘just ruler’ (*imām ‘ādil*).¹²⁰ This subtle distinction has major ramifications because it

¹¹² On rebellions during the Umayyad period, including their overthrow by the ‘Abbasids, see G. R. Hawting, *The First Dynasty of Islam: The Umayyad Caliphate AD 662–750* (London: Routledge, 2000).

¹¹³ For a general discussion of rebellion in Islamic law, see Khaled Abou El Fadl, *Rebellion & Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001). On Shī‘ism and rebellion, see Najam Haider, *The Rebel and the Imam in Early Islam: Explorations in Muslim Historiography* (Cambridge: Cambridge University Press, 2019).

¹¹⁴ Al-Ghazālī, *Kitāb al-Iqtisād fī al-‘tiqād*, ed. ‘Abd Allāh M. al-Khalīlī (Beirut: Dār al-Kutub al-‘Ilmīyya, 2004) 127–8.

¹¹⁵ Al-Ghazālī, *al-Iqtisād*, 129.

¹¹⁶ Ibn Babawayh, *Kitāb al-I‘tiqadat* (Tehran: Mu‘assasat al-Imam al-Hadi, 2014) 346.

¹¹⁷ Ibn Bābawayh, *al-I‘tiqādāt*, 347–8.

¹¹⁸ Ibn Bābawayh, *al-I‘tiqādāt*, 349.

¹¹⁹ See, for instance, al-Māwardī, *al-Aḥkām al-sulṭānīyya*, ed. Aḥmad Jād (Cairo: Dār al-Ḥadīth, 2006) 100.

¹²⁰ See, for instance, al-Ṭūsī, *al-Iqtisād*, 601.

shows a major split between the two sects; a split that has historical explanations. Medieval Sunnī jurists, mostly, articulated their views during the time of the ‘Abbāsids; that is when Sunnī caliphs, however nominally at times, were in charge of the Islamic world.¹²¹ Thus, in their opinion, acts of rebellion were to be condemned; this became the basis for later Sunnī juridical reflections on rebellion. Twelver Shī‘īs, however, did not accept the legitimacy of Sunnī rule, hence their insistence that rebellion is only condemnable if it is against a just ruler. Yet, they realized the impossibility of rebellion in the absence of an Imam, which led them to promote dissimulation (*taqīyya*) as a better strategy. Nevertheless, they could not condemn the principle of rebellion altogether because former Imams rose in rebellion against Umayyad and ‘Abbāsīd ‘usurpers’.¹²² Therefore, they were treading a fine line between prescribing a course of action for their own times, and commenting on past events.

Unlike the Twelvers, the Zaydīs were very active in rebellions, and that is because Zaydism stipulated rising up in arms in order to establish justice and impose God’s law as one of the obligatory criteria of a truthful Imam.¹²³ Ironically, the first sultanate in the Muslim world – the Būyids (945–1055) – adhered to Zaydism, yet they functioned well under the symbolic leadership of the Sunnī ‘Abbāsīd caliphs. Al-Mu‘ayyad bi-Allāh (d. ca. 1020), who was a Zaydī Imam, contended that ‘it is the duty of the Imam to lead the community, by commanding right, prohibiting wrong and enforcing the penalties imposed by God.’¹²⁴ He even said that ‘the Imam is obligated (*mukallaf*) to do that if the circumstances allow.’¹²⁵ Ibn al-Murtaḍā (d. 1436), who was also a Zaydī Imam for a short while, clarified that the Imam should rebel only if he has supporters to help him;¹²⁶ in other words, without supporters, the obligation to lead a rebellion is removed from the Imam.¹²⁷

The Question of communal obligation (*farḍ kifāya*) and individual obligation (*farḍ ‘ayn*)

When talking about war under the rubric of jihad, it is imperative to briefly discuss how jurists understood the nature of its obligation, that is as a communal obligation (*farḍ kifāya*) or as an individual obligation (*farḍ ‘ayn*).¹²⁸ As seen earlier, al-Ṭūsī and Ibn Rushd, for example, considered the waging of jihad as a communal obligation. Al-Rāzī, however, spoke of offensive jihad as a communal obligation, whereas he considered defensive jihad as an individual obligation.

The notion of communal obligation became popular among jurists in the eighth century, and it is possible they argued it in order to give the head of the Islamic polity (the ‘Abbāsīd caliph) control over war and peace, so that individuals do not end up compromising the strategic interests of the Islamic polity. Al-

¹²¹ This also applies to the period after 945, when ‘Abbasid caliphs lost their actual power and were subordinated to other dynasties. At least symbolically, they retained their ‘leadership’.

¹²² For some example, see Haider, *The Rebel and the Imam*; and Abou El Fadl, *Rebellion & Violence*, 295–320.

¹²³ On Zaydism’s stance on rebellion by Zaydī Imams, see Haider, *Shī‘ī Islam*, 39–41.

¹²⁴ Al-Mu‘ayyad bi-Allāh, *Sharḥ al-Tajrīd fī fiqh al-zaydīyya*, eds. Muḥammad-Yaḥyā S. ‘Azzān and Ḥamīd J. ‘Ubayd (6 vols., Ṣan‘ā’: Markaz al-Turāth wa-l-Buhūth al-Yamanī, 2006) 6: 477.

¹²⁵ Al-Mu‘ayyad bi-Allāh, *Sharḥ al-Tajrīd*, 6: 479.

¹²⁶ Ibn al-Murtaḍā, *Kitāb al-Baḥr al-zakḥkhār al-jāmi‘ li-madhāhib ‘ulamā’ al-amṣār*, ed. ‘Abd Allāh al-Jarāfī (6 vols., Ṣan‘ā’: Dār al-Ḥikma al-Yamānīyya, 1947) 5: 385.

¹²⁷ Ibn al-Murtaḍā, *al-Baḥr al-zakḥkhār*, 5: 387.

¹²⁸ I translate *farḍ kifāya* as ‘communal obligation’ for the reason that the expectation to fulfil the obligation rests with the community, and that it pertains to the political head of the community (caliph, sultan, etc.), not the individual Muslims, to decide how the duty is to be carried. Others have translated *farḍ kifāya* as ‘collective obligation’ or ‘collective duty’, which conveys the understanding that the individuals must fulfil the duty collectively, which is invariably not what Muslim jurists meant by *farḍ kifāya*. Moreover, even though many of them stressed that every Muslim is faulted if the obligation is not communally fulfilled, they did not at all address how each individual can assure communal fulfilment. For a recent study on the development of the notion of *farḍ kifāya* in Islamic law, see Zulfiqar, *Collective Duties*.

Shāfi'ī, for instance, argued that a proper reading of the Qur'ān and the Sunna of the Prophet Muhammad proves that jihad is a communal duty. He contended that:

In every duty where God's intension is for it to be fulfilled by a sufficient number of people on behalf of everyone else, if those who can grasp it undertake it, then those who hold back have avoided sin. But if all of them ignore it, then I am sorry to say that every able Muslim commits a sin.¹²⁹

Yet, determining what types of jihad are communal or individual was more complicated. To illustrate this point further, let's look at the argument of Ibn Qayyim al-Jawzīyya (d. 1350) on jihad as a communal obligation. He alleged that jihad with the heart, tongue and wealth are individual obligations, whereas jihad with one's body is a communal obligation.¹³⁰ He quoted in support of his argument verses 9:41 and 61:10–2, both of which emphasize to the believers: 'wage jihad in the path of God with your wealth and persons.' How can one conclude from such a pronouncement that the jihad of wealth is an individual obligation whereas the jihad of the body is a communal obligation? The distinction is not made in either verse, or in the Qur'ān for that matter. It is made outside the Qur'ān, by recourse to some prophetic ḥadīths, to the views and practices of early scholars, or to hermeneutical tools intended to impose a coherence on the Qur'ān which allowed each scholar to reach conclusions in line with the dogmatic tenets of his sect or branch of law.

Similarly, it is reported that Sufyān al-Thawrī (d. 778) refused to consider jihad as a religious duty. He labeled it as an invitation that Muslims can accept or reject.¹³¹ Moreover, al-Jaṣṣāṣ (d. 981) distinguished between the level of obligatoriness of the duty in relation to the location of the Muslims. Those close to the borders with the enemies, he argued, have an individual obligation to fight them, whereas Muslims elsewhere only have a communal obligation if those on the frontiers are fulfilling the duty.¹³²

Al-Rāzī, as seen earlier, agreed that jihad is a communal obligation unless the enemy attacked the Muslims, in which case it becomes an individual obligation. He even argued that those exempted from communal jihad – i.e., slaves, women, the blind, the disabled, and the amputees – must fight if the enemy attacks their land.¹³³

Here as well we see how discussions about the nature of jihad as a communal or individual duty evolved and was impacted by the reality of the Muslim world. During the time when the Muslims were expanding the borders of the Islamic polity, communal jihad seemed the best course. But when central Islamic land was occupied (e.g., the Crusader conquests, the Mongol invasion, etc.), some jurists felt the concept of communal jihad must be revised.

Islamic Law vs. Historical Practice

In determining the laws of war and peace in Islam, it is prudent to look beyond the legal manuals or jihad treatises, and take into consideration the historical practice. Some juristic opinions could have been theoretical exercises, but many were not and were shaped or invoked in relation to actual events.

¹²⁹ Al-Shāfi'ī, *The Epistle on Legal Theory*, ed. and trans. Joseph E. Lowry (New York: New York University Press, 2013) 264–6 (§444).

¹³⁰ Ibn Qayyim al-Jawzīyya, *Zād al-ma'ād*, 3: 64.

¹³¹ Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, ed. M. al-Ṣādiq Qamḥāwī (5 vols., Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1996) 4: 311; see also Zulfīqar, *Collective Duties*, 131–2.

¹³² Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 4: 310; see also Zulfīqar, *Collective Duties*, 135–6.

¹³³ Al-Rāzī, *Tuḥfat al-mulūk*, 179.

Moreover, the practice on the ground is essential for it helps us attain a broader understanding of how Muslim rulers and jurists engaged in the different facets of war and peace beyond scholarly debates. This is especially the case in those situations when we are certain that jurists were present alongside rulers to wage in with their opinions and views, even though the final decision (be it on the initiation of war, negotiation of truce, treatment of prisoners, etc.) was invariably the rulers' prerogative.

The best examples we have come from the Crusader period. The reason for that is because we possess legal manuals written during this period, as well as an abundance of contemporary sources and accounts that describe in details how a given battle started, the forms of negotiation conducted before and during the battle, post-battle settlement, truces, treatment of prisoners, etc. By putting the two together, we can form a better idea about the relationship between law and practice.

For instance, during the Crusader period, the notions of *maṣlaḥa* (best interest) and *ḍarūra* (necessity) and verse 8:61 of the Qur'ān were often invoked to legitimize and substantiate refraining from warfare and seeking peace with the Crusaders. An example of this is when Prince Bohemond of Antioch proposed in 1188 a truce to Sultan Saladin, and Saladin's generals and jurists urged him to accept it by invoking the said verse.¹³⁴ Similarly, during the negotiation with King Richard, Saladin's generals and court jurists pushed him to settle for peace, by saying:

It is more advisable that we accept what God had said in the verse which he revealed, namely 'If they seek peace, accept it.' For only then people could go back to their lands and raise crops. Troops could replenish their supplies and get respite from the vicious conflict. Should war resume, we will be ready and well prepared, with food and fodder, not exhausted or penniless. For it is during the days of peace that we get ready for war and prepare the instruments of fighting. It is not an abandonment of religious duties, but rather a period of renewal and improvement. As for the Franks, they are deceitful and do not observe their oaths. Make truce with their leaders so that they leave and disperse.¹³⁵

Like the views of Ibn Qudāma cited earlier, one sees how in real situations, jurists invoked the concepts of *maṣlaḥa* (best interest), *ḍarūra* (necessity), and other substantiating arguments, such as verse 8:61, in order to legitimize accepting peace and avoiding war.¹³⁶ Even though Ibn Qudāma was a Ḥanbalī jurist whereas Saladin's jurists were Shāfi'īs, nevertheless, the examples we have seen show that some juristic views were shared between different branches of law, and more importantly, certain scholarly juridical discussions corroborated actual practice on the ground, and vice versa.

Another point – raised by Ibn Qudāma and al-Rāzī – about the need for the Muslim ruler to inform the enemy about his decision to cancel a truce or their breach of it before he could initiate war against them. This too corresponds to actual practice, such as when, in 1204, King Aimery and Sultan al-ʿĀdil renewed a truce for six years between the Crusader Kingdom and the Ayyūbid Sultanate.¹³⁷ However, in 1207, it was violated when Franks from Cyprus seized a few Muslim ships. Al-ʿĀdil demanded from the leaders in Acre (who controlled Cyprus) to resolve the matter, writing to them: 'We are at truce. Why have you acted treacherously towards our men?' Al-ʿĀdil threatened to initiate war if the ships were not released.

¹³⁴ ʿImād al-Dīn al-Iṣfahānī, *al-Faṭḥ al-qussī fī al-faṭḥ al-qudsī* (Cairo: Dār al-Manār, 2004) 141.

¹³⁵ ʿImād al-Dīn al-Iṣfahānī, *al-Faṭḥ al-qussī*, 315.

¹³⁶ More on this, see Suleiman A. Mourad, 'Crusader-Muslim Relations: The Power of Diplomacy in a Troubling Age' in Howard Williams (ed.), *The Palgrave Handbook in International Political Theory* (London: Palgrave Macmillan, 2021) forthcoming.

¹³⁷ Ibn al-Athīr, *al-Kāmil fī al-ta'rikh*, ed. ʿUmar ʿA.-S. Tadmurī (10 vols., Beirut: Dār al-Kitāb al-ʿArabī, 1997) 10: 200-1; idem, *The Chronicle of Ibn al-Athir for the Crusading Period from al-Kāmil fī'l-Ta'rikh*, trans. D. S. Richards (3 vols., Farnham: Ashgate, 2006–2008) 3: 79.

King Aimery resolved the matter, and the truce was confirmed.¹³⁸ Here too, we have an agreement between juridical opinion and actual practice.

With respect to the treatment of prisoners, one example comes from the Battle of Hattin in July 1187, when Saladin paid his soldiers 50 dinars for each prisoner they caught. The payment underscores a debate in Islamic law as to who owns the prisoner: the ruler or the soldier who captured the prisoner. In this case, it is clear that Saladin was acknowledging that for him to claim the prisoners, he must first compensate his soldiers who captured them. Once he did, he could determine the fate of the Crusader prisoners: some he ordered killed, but others he exempted, especially Crusader leaders, as this report suggests:

On Monday morning, 27 Rabi‘ II (6 July 1187), two days after the victory, Saladin asked the Templars and Hospitaller prisoners to be brought to him. He said: “I shall cleanse the earth from this type of filth.” He promised to give 50 dinars to each soldier who captured a prisoner. They brought 200 prisoners, and he ordered them to be executed. He chose to kill them instead of selling them as slaves. ... The Frankish king, his brother, Humphrey, the lord of Byblos (Ugo III), the Great Master of the Templars, and their senior commanders were taken in chains to Damascus, where they were imprisoned.¹³⁹

It is noteworthy that Saladin actually saved the crusader leaders from death – except Raynald of Chatillon whom he killed to avenge offenses Raynald had committed against Muslim merchants and pilgrims¹⁴⁰ – very likely because he could secure great sums for their release.

Another example is from 1221, at the end of what is commonly called ‘Fifth Crusade’, when Sultan al-Kāmil defeated the Crusader army. He decided not to kill them and ultimately released them, as this report indicates:

The Franks were a massive force: 100 counts, 800 of their celebrated knights, the King of Acre, the Duke (Leopold VI) and the Pope’s legate (Cardinal Pelagius). As for foot soldiers, there was no way to tally them. When they realized they were doomed, they sent to al-Kamil a message seeking peace and the exchange of hostages. They also promised to surrender Damietta. Al-Kamil was so eager to save Damietta that he accepted their offer. Had this lasted two more days, the Muslims would have killed them all. Al-Kamil sent to them as hostages his son al-Salih Ayyub and his nephew Shams al-Muluk. The Franks’ hostages were the leaders identified above; when they arrived, al-Kamil received them with presents and assigned for them special tents.¹⁴¹

Al-Kāmil’s decision, which was made in the presence of several jurists, reveal a few aspects about post-war settlement from actual practice, and which can elaborate on specific points raised in legal manuals; especially as we saw earlier with al-Kulaynī, Ibn Rushd and al-Rāzī. For instance, his decision to release the Crusaders in exchange for Muslim prisoners and the city of Damietta (which the Crusaders had captured in 1219) corresponds to juridical discussions in legal manuals about the prerogative of the ruler to determine the fate of prisoners. The new thing that we find in the report cited above is about the practice of exchanging hostages between two warring groups, as a guarantee that each side honors its obligation.

¹³⁸ Ibn al-Athīr, *al-Kāmil*, 10: 263; idem, *Chronicle*, 3: 137.

¹³⁹ ‘Imād al-Dīn al-Iṣfahānī, *al-Faṭḥ al-qussī*, 53. Translation from James E. Lindsay and Suleiman A. Mourad, *Muslim Sources of the Crusader Period: An Anthology* (Indianapolis: Hackett Publishing, 2021) 95–6.

¹⁴⁰ ‘Imād al-Dīn al-Iṣfahānī, *al-Faṭḥ al-qussī*, 51.

¹⁴¹ Sibṭ Ibn al-Jawzī, *Mir‘āt al-zamān fi ta’rikh al-a‘yan* (Hyderabad: Dā‘irat al-Ma‘ārif al-‘Uthmāniyya, 1951) 8.2: 618–21. Translation from Lindsay and Mourad, *Muslim Sources*, 112–3.

Summarizing conclusion

As we have seen in the examination above, medieval Muslim jurists did not agree about the laws of war and peace. They diverged on the details as well as on fundamental issues. Nevertheless, one can still regroup their discussions into four categories that broadly correspond to laws about initiating war (*jus ad bellum*), laws about the conduct of war (*jus in bello*), laws of ending war and post-war situation (*jus post bellum*), and laws about peace and truces (*leges pacis*). In doing so, however, the summary does not constitute in any way 'Islamic law' on war and peace. The simple reason for that is that such a summary exists nowhere in the medieval literature on Islamic law. Moreover, as explained before, there is no agreement on it among Muslim jurists. Add to this the fact that their views have been expressed over a long period of time and in different historical circumstances, and they were also influenced by doctrinal differences and historical dynamics. Therefore, one cannot impose on these views any unity.

There are other important factors regarding the Islamic laws of war and peace that we must acknowledge. First, war is generally seen as a communal obligation and not as an individual duty where every Muslim is obliged to participate in it; although the jurists disagree in the case when an enemy attacks Muslim land. Second, some Muslim jurists explicitly argued that there was a historical progression during the career of the Prophet Muḥammad regarding war, which started in the Meccan period when war was banned, then the Medinan period when it was permitted and waged against the polytheists of Arabia, then the post-Muḥammad period when it took a different progression and outlook in the form of the conquests (like the arguments by Abū Yūsuf and al-Māwardī). Others, like Ibn Qayyim al-Jawzīyya, limited the progression to three phases all during the lifetime of Muḥammad: war was not permitted in Mecca, then it was made legitimate in the early Medinan period but only for the purpose of defense, after that offensive war was permitted. Al-Kulaynī, however, divided the types of war into three: wars during the time of Muḥammad against Arab polytheists, wars against the People of the Book, and wars against non-Arab polytheists. These conceptual variations acknowledge that jurists never considered the laws of war in Islam to be static. This also complicates our exercise in that we cannot pick a few verses from the Qur'ān or prophetic ḥadīths and say they represent Islamic law on war and peace.

Add to all of these issues the fact that some Muslim jurists worked diligently within a legal tradition whereby they acknowledged the opinions of other jurists, and when they were not able to reconcile them together, they accepted them all as legally valid. This was evidently the case of Ibn Rushd, Ibn Qudāma and many others. Some jurists, however, were very forceful in ignoring this rich diversity and waged in with their opinions and tried to argue for clear laws of war and peace, such as al-Shaybānī to some extent, but definitely Ibn 'Abd al-Salām, al-Rāzī and Ibn Taymīyya.

Laws about initiating war

Muslim jurists tied the laws that justify the initiation of war to several motives. One can say that they generally agreed that war is in theory a necessary thing, but they differed on what it is supposed to engage or achieve. The most repeated motives are four: call and convert others to Islam, levy the *jizya*-tax from those who do not want to convert, protect the lands of Islam, and fight seditionist Muslims until they either repent, are killed, or their threat is extinguished. But as we saw clearly, jurists disagreed as to whether the war must be preceded by a call to Islam: some conditioned war on the rejection of the call (like al-Kulaynī, Ibn Rushd and al-Rāzī), while others did not make it a condition (like Abū Yūsuf, al-Shaybānī and al-Ṭūsī). Other jurists still distinguished between those living in adjacent territories and who knew of Islam, in which case there is no point of calling them to Islam before war, whereas those living beyond them and have not heard of Islam, they must be called to Islam before the war could proceed (as argued by Ibn Qudāma).

The levying of the jizya-tax is often restricted to the People of the Book – namely Jews, Christians, and small groups that broadly fit as monotheists – and Zoroastrians. It does not extend to idol worshipers (as we saw with al-Ṭūsī and Ibn Qudāma). Some jurists (as made amply clear by Ibn Rushd) extended it to many religious communities with which the Muslims came into contact (Hindus, Turkic peoples, etc.). In this respect, jurists did not agree if war against the People of the Book is to convert them, and if they refused to convert, to impose on them the jizya-tax (as argued by Ibn Rushd, Ibn Qudāma and al-Rāzī) or only to compel them to pay the jizya-tax (as stipulated by al-Kulaynī and al-Ṭūsī).

It is worth repeating that the Arab Christian tribe of Banū Taghlib received the same treatment as Muslims, and they paid zakat-tax (alms) instead of jizya-tax.

A few jurists (e.g., al-Kulaynī and al-Ṭūsī) conditioned the launching of war on it being authorized by the Imam as the only legitimate leader of the Muslim (either personally led by him or delegated the task to someone else). This view means that any other war not authorized by the Imam is not a legitimate war. Others (as we saw with ‘Abd al-Jabbār) argued that war should not lead to a worse situation than the one it was supposed to correct.

There is no agreement as well if war is against unbelief as such, that is as a conceptual threat, or against the potential physical threat of the unbelievers towards the believers. This distinction is raised by Ibn Rushd and led him to allow for several positions depending on each scenario.

There is also the war against secessionist Muslims, which many jurists justified. But as we saw in the discussions above, some (like Ibn Taymīyya) were very clear about its necessity and the way it is to be done. Others (like al-Kulaynī) were hesitant to address it other than in a theoretical way, which likely reflected their concern that it often leads to the fragmentation of the Muslim community and to a worse outcome. Al-Ṭūsī dodged the issue by giving the Imam the exclusive right to conduct it, but as we know, by his time there was no active Imam in Twelver Shī‘ism, hence war against secessionist Muslims is on hold until the Imam returns. Al-Rāzī gave a view similar to that of al-Kulaynī, arguing that war against secessionist Muslims is allowed only if they attack first. In this respect, Sunnī and Twelver Shī‘ī jurists did not approve of rebellion, although this was a ‘going forward’ kind of position rather than a judgement on past cases. Zaydīs, however, considered rebellion as necessary act by the Imam in order to reassert justice and the application of God’s commandments, provided, according to some jurists, certain conditions are met.

Laws about the conduct of war

The laws about the conduct of war are equally diverse and contradictory. Sometimes the differences are very sharp. Ibn Rushd was very forthcoming in describing the causes for that: the contradictions and differences within and between the Qur’ān, Ḥadīth, the historical experience and views of early jurists. Since all of these constitute what we might call the ‘foundational’ sources of Islamic law, they all had the same level of authority. Some jurists (such as al-Shaybānī, Ibn ‘Abd al-Salām, and al-Rāzī) decided to ignore this diversity and weighed in with their personal views. But most others (especially Ibn Rushd and Ibn Qudāma) gave them equal authoritative voice when discussing the laws of war.

Jurists disagreed on the conditions that justify the Muslim fighters killing the enemies. Some restricted it to male enemy fighters and prohibited the intentional killing of women, (as we saw in the view attributed to Imam ‘Alī in al-Kulaynī and in Ibn Qudāma). Others allowed the killing of any person involved in fighting or propaganda on the part of the enemy irrespective of age, gender or physical/mental condition (as argued by al-Rāzī and Ibn Qudāma). Accidental killing of non-fighters, like women, children, elderly,

etc., is allowed under certain circumstances (as in the view attributed to Ja‘far al-Šādiq in al-Kulaynī). In this respect, the jurists were not in agreement on the conceptual justification as to whether the killing of the enemy is warranted on the basis of unbelief or ability to fight (as discussed by Ibn Rushd). In the case of the former, they are all to be killed, whereas in the case of the latter, only fighters are allowed to be killed. Also, in the latter case, it is justifiable to kill non-fighters accidentally (something that can be compared to the modern theory of collateral damage).

There is disagreement as well regarding the killing of human shields used by the enemy. Al-Rāzī and Ibn Qudāma allowed the intentional targeting and killing of human shields, even if they included captive Muslims.

Similar disagreement exists about damages to villages, homes, farmlands and crops. Al-Shaybānī, al-Rāzī, Ibn ‘Abd al-Salām, Ibn Taymīyya and also the view attributed to Ja‘far al-Šādiq in al-Kulaynī allowed extensive damage – such as flooding the towns, attacking them with mangonels or other projectiles, cutting trees, and burning homes and crops – as a way to weaken the enemies and force them to leave their land. Other jurists (such as al-Kulaynī) permitted them if there is necessity for that. Ibn Rushd and Ibn Qudāma argued that this is a matter of disagreement among Muslim jurists; Ibn Qudāma allowed them if they were the only choices to capture an enemy town.

There is equally a disagreement on whether the enemy can be given an assurance of safety and who can do so. Some jurists permitted any Muslim to issue such an assurance including the slave if he is fighting (as in al-Shaybānī, al-Kulaynī and Ibn Qudāma) and it becomes legally binding, others disallowed the assurance of safety issued by a slave or a Muslim youth, or by a Muslim prisoner or merchant (as in Ibn Rushd and al-Rāzī). Al-Rāzī contended that the Muslim leader has the right to cancel any guarantee not issued by him.

Laws about Ending War and Post-war Periods

Laws about ending war and post-war situation are equally diverse. There is disagreement regarding whether the Muslims are allowed to kill, torture or mutilate the bodies of combatant enemy captives. Generally, jurists agreed that the leader has the authority to free unconditionally or for a ransom, or release on condition of paying the jizya-tax, enslave or even kill enemy hostages. There seems to be an agreement though, that if seditionist Muslims were to be fought, the war cannot end with their release to go back and regroup. They must be annihilated. Ibn Taymīyya required that the apostate fighters and their leaders be eliminated and their community undergo a religious indoctrination back to Islam.

The treatment of enemy prisoners is an issue that received tremendous attention on the part of Muslim jurists. Al-Shaybānī gave the leader of the Muslim the authority to either kill enemy combatants or enslave them as he sees fit. Al-Kulaynī divided them into two classifications: enemy combatants caught during the war, and those caught after the war is over.¹⁴² The first group the Imam can either kill them or amputate their limbs and let them die. The second group the Imam has the right to release them, accept ransom for their freedom, or enslave them. Ibn Rushd disagreed with the former view, arguing that it is not permissible to torture or maim captured enemy combatants, but he acknowledged that there is disagreement regarding burning them (Ibn Qudāma did not allow the burning). Ibn Rushd also argued that the leader of the Muslims can free, enslave or kill enemy hostages, release them on ransom, or impose on them the jizya-tax. He acknowledged though that there is disagreement regarding the killing of captive

¹⁴² For more discussion about the treatment of prisoners of war, see Khaled Abou El Fadl, “Between Functionalism and Morality: The Juristic Debates on the Conduct of War,” in Jonathan E. Brockopp (ed.), *Islamic Ethics of Life: Abortion, War, and Euthanasia* (Columbia: University of South Carolina Press, 2001) 103–128.

monks, women, children, the elderly and the handicapped. Similarly, Ibn Qudāma contended that the leader of the Muslims determines the fate of imprisoned enemy combatants: he has the right to order them killed, released without any payment or for a ransom, exchanged with Muslim captives (which is also the view of al-Rāzī), or sold as slaves; but if they convert to Islam they cannot be killed. Captive women and children, according to Ibn Qudāma, are not allowed to be killed, but can be enslaved (which is also the view of Ibn ‘Abd al-Salām). We have seen, as well, examples from the historical practice that conform with some of these views.

Ibn Qudāma raised a legal objection for the separation of a mother and her young child from among enemy captives, and noted that prior jurists did not agree regarding the separation of a father and his child, a mother and her adolescent child, two siblings or cousins.

Laws about Peace and Truces

Muslim jurists diverged on the permissibility of truces, as seen in the discussion in Ibn Rushd. Some allowed truces on condition that there is benefit in it for the Muslims. Some (like al-Shaybānī, Ibn Qudāma and al-Rāzī) allowed that the Muslims pay the enemy in order to secure peace. Also, jurists did not agree on the length of truces; some putting a maximum length of three years, others at ten years (as we saw in Ibn Rushd). But as we saw with Ibn Qudāma, he invoked the notions of *maṣlaḥa* (best interest) and *ḍarūra* (necessity) in order to permit the continuous renewal of truces and peace treaties beyond the ten years, which was meant to preserve Muslim lives and resources. Such legal opinions can be said to legitimize an indefinite peace. Here as well, we have examples from the historical practice, as we saw with Salādin, where *maṣlaḥa*, *ḍarūra* and verse 8:61 were frequently invoked in order to accept and legitimize truces with Crusader leaders. In this respect, the issue that a peace treaty can only be for a fixed number of years does not mean that Muslim jurists did not have an idea about or rejected the concept of permanent peace. We misconstrue the sources if we assume otherwise, by imposing on them conclusions that they do not convey.

Ibn Qudāma also raised an important point that truces are concluded between groups, therefore, it is up to the leader or the one he designates to enter into a truce with the enemy. Once the peace is in effect, merchants from enemy land who visit the land of Islam must be protected, as argued by al-Shaybānī.

A few jurists permitted the cancellation of a peace treaty if the enemy commits an act of treachery (as asserted by Ibn ‘Abd al-Salām). Al-Rāzī, who argued that the Muslim leader could cancel peace provided he first informs the enemy, excepted that in the case of treachery by the enemy, the Muslim leader does not have to inform them. Ibn Qudāma insisted that the Muslim leader is bound by the peace treaty unless the enemy renounced it, in which case the Muslim leader must inform them about their infraction before he could declare war against them, and we have some historical examples about that, such as the case of Sultan al-‘Ādil and the Crusaders of Acre.

Final Point 1: About Vocabulary and Certain terms

The last point to be raised in this chapter is about the vocabulary and certain terminology that we come across in the medieval laws of war and peace. What complicates the examination of these laws is the use of the same terms and vocabulary over a long period of time. These terms and vocabulary, however, do not always denote the exact same meanings, and they evolved over the course of Islamic history. For instance, we often come across the designation of the enemy as unbelievers or polytheists. It is understandable that in the time of Muḥammad, such a designation invariably meant the polytheists of Arabia exclusively. Muslim jurists, however, kept using these terms even though more often than not they

employed them against Christians, who technically are People of the Book and not unbelievers or polytheists (as in the case of Caliph Hārūn al-Rashīd and his question to Abū Yūsuf). This ambiguity is partly responsible for causing disagreements among jurists in that some rejected certain verses and prophetic ḥadīths that clearly intended Arabian polytheists as applicable to the People of the Book. Others applied them uniformly to all non-Muslims and did not make any distinction.

Another term that is often used by jurists when discussing the laws of war and peace is ‘Imam.’ In the context of Shī‘ism, it is very clear that this title referred to the Shī‘ī Imam. In Twelver Shī‘ism, the Imam went into occultation in 874. Thus, any talk of the Imam authorizing war and peace and determining their laws became a theoretical or reflective exercise (thinking backward to the time when the Imams were either in power, led rebellions or abstained from warfare), especially after 941 (when the major occultation period was ushered and the Imam ceased all communication with the world). In proto-Sunnī and Sunnī legal discourses, however, the Imam was initially thought to be the caliph. But after the ninth century, it is not always clear who specifically is meant by this title. The ‘Abbāsīd caliphs lost their actual control on their dominion, not to mention that they became completely incompetent when it came to issues of war and peace. There is also the fact that there were other caliphs in Egypt (the Shī‘ī Fatimids), Muslim Spain (the Andalusian Umayyads, Almoravids and Almohads), and elsewhere. Therefore, the ‘Imam’ when used by the likes of Ibn Rushd, Ibn Qudāma, etc., is the actual ruler/sultan in their respective region, and not the ‘Abbāsīd caliph in Baghdad. Ibn Taymīyya, for instance, wrote his fatwa to the Mamluk Sultan al-Nāṣir Muḥammad (r. 1293–1294, 1299–1309 and 1310–1341).

Final Point 2: Modern Scholarship on Islamic laws of War and Peace

This chapter has generally avoided discussing the views of modern scholars on the laws of war and peace in Islam. This choice was based on a major problem in these studies, namely a conceptual mistake that assumes that Islamic law is exclusively based on the Qur’ān and that the Qur’ān furnishes a clear legal framework for war and peace that we can determine with precision.

The topics of war and peace are regularly invoked in the Qur’ān and the text makes specific and general pronouncements about them and the relationship between them. Yet, nowhere does the Qur’ān furnish a clear set of laws for either one, including requirements and conduct. It is also the case that the Qur’ān was not always the starting point of Islamic legal thought on war and peace (or other matters). This is very important to state because it helps us understand how Muslim jurists employed the verses of the Qur’ān selectively in order to provide support for their arguments and views on war and peace.

To illustrate this point further, I repeat the argument of Ibn Qayyim al-Jawzīyya (d. 1350) on jihad as a communal duty (*farḍ kifāya*). He alleged that jihad with the heart, tongue and wealth are obligatory individual duties (*farḍ ‘ayn*), whereas jihad with one’s body is an obligatory communal duty.¹⁴³ He quoted in support of his argument verses 9:41 and 61:10–2, which say to the believers: ‘wage jihad in the path of God with your wealth and bodies.’ The verse clearly places the jihad of wealth and bodies on the same level. Hence, Ibn Qayyim al-Jawzīyya’s distinction does not reflect what the Qur’ān actually says, but rather the way Muslim jurists imposed on the Qur’ān certain views by recourse to prophetic Ḥadīths, to the views and practices of early scholars, or to hermeneutical tools intended to impose a coherence on the Qur’ān which allowed each scholar to reach conclusions in line with the dogmatic tenets of his sect or branch of law.

The inconsistencies in the Qur’ān can be described as a clash within the text between two tendencies: divine punishment and divine mercy. On the one hand, the Qur’ān often stresses that unbelievers are to be fought until they submit to God’s law. On the other hand, the Qur’ān also enjoins

¹⁴³ Ibn Qayyim al-Jawzīyya, *Zād al-ma‘ād*, 3: 64.

the believers to give the unbelievers another chance to repent. Verses 9:5–6 are probably the best example of these two clashing tendencies:

Once the sacred months are shorn, kill the polytheists wherever you find them, arrest them, imprison them, besiege them, and lie in wait for them at every site of ambush. If they repent, perform the prayer and pay the alms, let them go on their way: God is all-forgiving, compassionate to each. If a polytheist seeks your protection, grant him protection until he hears the speech of God, then escort him to where he feels safe. For they are a people of no understanding.

In these verses, we clearly see the injunction to wage war against the polytheists, yet, we also see the emphasis to leave them alone and give them another chance to repent.

It is equally unclear whether commands to wage war in the Qur'ān are meant to be only applicable to specific situations at the time or if they are to be the norm to follow in all future cases. Such problems too are not resolvable with the historical information at our disposal. We can carefully select a few verses and argue that they represent the Qur'ān's law of war and peace, as many modern scholars have done.¹⁴⁴ Such attempts, however, are modern views about the laws of war and peace that exploit the Qur'ān for legitimacy and endorsement.

There is an additional problem with respect to modern studies on war and peace in Islam, namely the tendency to impose on Islamic law a rigid conformity or treat the views of a specific jurist as reflective of all of Islamic law.¹⁴⁵ As seen in this chapter, Muslim jurists almost universally refused to accept the Qur'ān as the exclusive authority on matters of war and peace. Equally, they did not agree among themselves on pretty much every aspect of war and peace. This deficiency in modern studies reflects modern academic consensus and agendas, and, therefore, they better be studied under modern views about the Islamic laws of war and peace.

¹⁴⁴ See, for instance, Khalid Yahya Blankinship, 'Parity of Muslim and Western Concepts of Just War', *The Muslim World* 101.3 (2011) 412–26; and Liyakat Takim, 'War and Peace in the Islamic Sacred Sources', *Journal of Shī'ī Islamic Studies* 4.1 (2011) 5–22.

¹⁴⁵ See, for instance, Asma Afsaruddin, *Striving in the Path of God: Jihad and Martyrdom in Islamic Thought* (New York: Oxford University Press, 2013); John Kelsay, *Arguing the Just War in Islam* (Cambridge: Harvard University Press, 2007); James T. Johnson, *The Holy War Idea in Western and Islamic Traditions* (University Park: Pennsylvania State University Press, 2002); and Marcel A. Boisard, *Jihad: A Commitment to Universal Peace* (Plainfield: American Trust Publications, 1988).

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