

HOLY PEACE OR HOLY WAR:
TOLERANCE AND CO-EXISTENCE
IN THE ISLAMIC JURIDICAL
TRADITION

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Abstract: *Since the events of September 11, 2001, there has been much discussion on violence in Islam. Especially in the media, Islam has been depicted as intrinsically violent and militant. As a matter of fact, the media has, at times, instilled a fear of Islam.¹ The demonization of Islam has come from different sources. Many Christian fundamentalist groups, for example, have described Islam as an “evil and frightening religion.” However, very little has been said regarding the classical Islamic texts and their discourse on war and peace. In this paper, I examine the classical juridical and exegetical pronouncements on peace and war and will assess the possibility of an Islamic theology of peace in modern times.*

The Encounter with the Other in Islamic Juridical Literature

A discussion on the juridical pronouncement on war and peace necessitates an understanding of the Muslim encounter with the other. Historically, the Qur’anic view of engagement with the “other” was shaped by the socio-political milieu in which it was revealed. Islamic revelation found expression in a pluralistic world in which Muslims had to deal with Arab pagans and adherents of other monotheistic religions.

In the sectarian milieu of seventh-century Arabia, Muslims encountered other monotheists like the Christians and Jews. These encounters generated inter-religious polemics, which are reflected in the Qur’anic verses, especially those that were revealed in Medina. The *ahl al-dhimma* in the Qur’an and early history of Islam were the protected minorities, both Jewish and Christian, who had chosen not to convert to Islam. They were allowed to follow their own laws, modes of worship provided this would not impinge on the Muslim community. The term *dhimma* refers to a pact drawn up with the people of the book which the believer agrees to respect, the violation of which makes him liable to blame (*dhamm*).

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In return for security and protection, the people of the book were required to pay a poll tax (*jizya*), which is mentioned in verse 9:29. The poor and dependents were ex-empt from paying this special tax. The *jizya* was also levied in compensation for exemption from military service in Muslim forces. If a *dhimmi* joined the service then *jizya* was not levied.²

The historical record of Muslim engagement with peoples of other faith lies in stark contrast to the tolerance and awareness of other religions set forth in the Qur'an and the practices of the early Muslim community. The Qur'an imposes no limitations on demeanor with *dhimmis*. It does not stipulate that they be humiliated or derided. Yet the classical Muslim jurisprudence explicitly states that non-Muslims cannot have the same rights, obligations, and liberties as Muslims.

The distinction between the Qur'anic concept of coexistence with non-Muslims and the policies advocated by subsequent Muslims can be seen from the following comparison. The Qur'an allowed the evidence of non-Muslims when no Muslim was available to witness the will of a Muslim who died on a journey (5:106). Abu Hanifa (d. 767), however, rejected the evidence of non-Muslims in this case and Abu Yusuf (d. 798) declared the Qur'anic passage to have been abrogated by verse 65:2. The Medinese jurists went even further, rejecting the evidence of non-Muslims altogether, even against one another.³ Gradually, a series of restrictions were regulated so as to enforce Muslim supremacy and to reflect the inferior status and identity of non-Muslims.

Several discriminatory measures such as the prohibition against building new churches or repairing old ones were enacted. Muhammad b. 'Abdun (d. 1100), for example, states in his treatise that priests must be forcibly circumcised simply because they persist in following the example of Jesus Christ who was, states Ibn 'Abdun, circumcised. A Jew or Christian should not be allowed to dress like an important person. A Muslim may not wash a Jewish or Christian toilet.⁴ Other jurists held that Muslim authorities may prohibit *dhimmis* from marrying Muslims. *Dhimmis* were to wear distinctive clothing, more specifically, special emblems on their clothes as a token of their inferior or different status.

They were to live in houses that were smaller than Muslim houses. They were not permitted to ride a horse, which was a public proof of one's affluence. Most schools, apart from the Hanafis, paid a lower blood price for a *dhimmi* who was killed. *Jizya*, says the Qur'anic exegete Zamakhshari, should be taken from them with belittlement and humiliation. The *dhimmi* is to come walking, not riding. When he pays the *jizya*, he shall be slapped on the nape of his neck.⁵ Others added symbolic acts of humiliation—for example that the *dhimmi's* hand was to be lower than the tax collector's hand when he pays the *jizya*. These regulations were incorporated in the jurisprudence as a divinely sanctioned system of discriminatory provisions.⁶ Not all jurists agreed with such acts of humiliation. Abu Yusuf, for example, states that *dhimmis* should not be treated harshly or humiliated, rather, they should be treated with considerable leniency.⁷ The tendency among jurists of the eighth and ninth centuries was to seek justification for the discriminatory rulings by claiming that the unbelievers had chosen to refuse the offer to convert. Hence, their inferior status was the product of their own choice.

Overall, Muslims discriminated against but did not persecute the *dhimmis*. According to Bernard Lewis, "... in contrast to Christian anti-Semitism, the Muslim attitude toward non-Muslims is one not of hate, or fear, or envy, but simply of contempt."⁸ It is plausible to maintain that the policies of the state and political exigencies were incorporated in the body of the emerging Islamic law at the time. Rather than reflecting divine sanctification of the law, the various regulations regarding the *dhimmis* were enacted to vindicate the political and military realities of the time. The rulings on the *dhimmis* also demonstrated the Muslim ascendancy over the people of the book.

The Abodes of Peace and War

Being universal in its outlook, Islam had to contend not only with non-Muslims living in its dominion but also with those living outside its borders. The classical Muslim jurists divided the world into the abode of Islam (*dar al-Islam*) and the abode of war (*dar al-harb*). The territory of Islam signifies a political entity that acknowledges and upholds Islamic values and laws. As it purportedly upholds the *shari'a* (Islamic law), this abode is seen as the territory of peace and justice. The enforcement of *shari'a* was important as it regulated and harmonized relations among its constituent elements. *Dar al-harb*, on the other hand, was the land of infidels, the epitome of heedlessness and ignorance that posed a threat to the Islamic order. The absence of the *shari'a* in the abode of war was presumed to epitomize injustice and to foster lawlessness and insecurity. The jurists' concern was to universalize application of the *shari'a*, their ultimate goal being to propagate the Islamic faith.

Based on the jurists' bifurcation of the world, peace was possible only when everyone lived under the protection of an Islamic state. *Dar al-harb* was to be infused with Islamic ideals by extending the boundaries of *dar al-Islam*. By accentuating the *shari'a* as the only source of legal prescription and validity, the jurists constructed a perpetual ideological contest between *dar al-Islam* and *dar al-harb*. Through this construction, the jurists were able to formulate rulings legitimizing Muslim expansion and ascendancy over the non-Muslim world.

It is important to note that these spheres in Islamic jurisprudence do not occur in the Qur'an. Unlike the jurists, the Qur'an does not suggest a perpetual state of war between *dar al-Islam* and *dar al-harb*. Rather than reflecting the Qur'anic pronouncement on interfaith relations, the legal construction of the world into *dar al-Islam* and *dar al-harb* are indicative of the historical realities that the 'Abbasid jurists had to contend with. It is within this context that we can discuss the concept of international relations (*siyar*) in Islamic jurisprudence. According to al-Sarakhsi (d. 1097), a Hanafi jurist,

"*Siyar* ... describes the conduct of the believers (Muslims) in their relations with the unbelievers of enemy territory as well as with people with whom the believers had made treaties, who may have been temporarily or permanently in Muslims' land; and [*siyar* also describes the laws of conduct] with apostates and rebels."⁹

Siyar reflected and governed the laws of conduct of the Islamic state with other communities. An important ramification of the *siyar* was that besides the revelatory sources, (the Qur'an and traditions from Muhammad), the jurists had to tap into other sources to formulate the rules incorporated in the *siyar*. This is because the Qur'an had not divided the world into the two abodes. Furthermore, there was no prophetic precedent that articulated clear guidelines for such an engagement. Thus, in many cases, the jurists had to develop their own rules governing the interaction with non-Muslim states. They often deduced laws based on the principle of *maslaha* (rulings enacted in the public interest). By invoking the principle of "public interest," the jurists saw the potential to legitimize state policies and secure political and military advantages that were in the interest of the Muslim community even if these contravened the spirit of the Qur'an. It was here that *jihad* against non-Muslims could be validated. This is an important point to remember, because Islamic law was reflecting the empirical and political necessity of the state. As it did, it became more alienated from the Qur'anic notion of a just and peaceful social order.

The earliest Islamic theory of international relations was articulated by al-Shaybani (d. 805), a judge and adviser in Caliph Harun al-Rashid's (d. 809) court, in the latter half of the eighth century. Al-Shaybani's theory of the *siyar* was conceptualized in legal terms as an external extension of the *shari'a*, governing Muslim conduct outside the dominion of *dar al-Islam*.¹⁰ Faced with the incongruity between the Qur'anic pronouncement of war and the political realities of the times, the jurists presupposed interpretations of the Qur'an, which were incorporated in the *siyar*. As John Kelsay correctly notes, it was the task of scholars like al-Shaybani to make judgments concerning the religious legitimacy of the Abbasid caliph's policies; most (though not all) of the time, he was able to identify those policies as in the interests of Islam.¹¹

Al-Shaybani's theory of international relations is articulated in his *Kitab al-Siyar*. In this famous work, his focus is more on the conduct rather than the legality of war. Evidently, jurists like al-Shaybani took for granted that *dar al-Islam* had to be extended to *dar al-harb*. Hence, they focused more on the rules of engagement (*jus in bello*), victory, and the terms of peace than on the legality of war (*jus ad bellum*).

After narrating traditions from the Prophet on the rules of engaging the enemy, al-Shaybani discusses the conduct of the Muslim army in enemy territory and the division of the spoils of war. He follows this with a discussion on social and economic intercourses between *dar al-Islam* and *dar al-harb*.¹² Al-Shaybani's theory on international relations is dictated by the political conditions that prevailed in his time and by the needs of the empire. Juridical works like al-Shaybani's reveal a tension between the Qur'anic notion of coexistence and the demands for extending the borders of *dar al-Islam*. Since Islam was used as a basis for the legitimation of power and authority and the expansionist goals of the Muslim state, the Qur'anic notions of pluralism and peaceful coexistence were challenged by the hegemonic notion of war for faith. In the process, threats to the political order were equated with threats to Islam itself. Islam became an important tool in the expansionist policy of the 'Abbasid empire. It was here that Muslim jurists came to play a prominent role.

Peace and War in the Juridical Sources

It is important to understand the interplay between peace and war in the classical legal discourse. This is because this discourse is not only a starting point but also a source of authority in the Muslim community. As Islam laid the foundation of its political order, Muslim jurists sought to articulate the state's relations with others. This was based on a theory of universal state of human kind, which constituted one community and ruled by one ruler, the imam. As the proponents of the universal state based on the *shari'a*, Muslims could not grant equal status to those who did not share the ideals of Islam.

Besides the people of the book, the jurists were confronted with another category of unbelievers who were not conquered and were not subject to Muslim power. They resided in *dar al-harb*, which was viewed as a potential danger to the Islamic polity. The territory of Islam could not be a secure place unless and until Islamic hegemony was acknowledged everywhere. To secure such hegemony was the goal of *jihad*.

Jurists linked the universal ideals of Islam with *jihad* so as to justify the extension of the boundaries of *dar al-Islam*. Paradoxically, the purpose of *jihad* was peace since this could only be achieved when the divine law that is imprinted on the human conscience was accessible to everyone, believers and unbelievers. At this point, there would be no confrontation between *dar al-Islam* and *dar al-harb*. According to the jurists, Muslims are obliged to propagate this divine law, through peaceful means if possible, through violent means if necessary.

The classical theory on *jihad* delineated the following steps as a precursor to initiating hostilities. The purpose of the war must be to preach Islam beyond its territories. The Muslims are supposed to fight with the right intent, for the cause and in the path of God rather than for material or personal interests. Their aim is to be the promotion of those values that promote peace. If a non-Muslim government permits the peaceful preaching of Islam within its domain, then there is no ground for war.¹³ If such peaceful preaching is denied, then the imam, the leader of the Muslim community, can initiate war aimed at absorbing that territory into the *dar al-Islam*. Tolerance, when practiced, was simply a missionary tool in the hope that ultimately the recalcitrant "unbelievers" would be won over to Islam.

In addition, the Muslim ruler must first invite the enemy to become Muslims or to pay a tribute as an acknowledgement of the ascendancy of the Islamic state. Acceptance of the invitation indicates a willingness to live under the norms of Islam. If the unbelievers refuse to adopt Islam or pay the tribute, they are considered to have wrongfully and inexcusably rejected the truth, and waived away some of their rights.¹⁴ Only if the non-Muslims refuse these conditions are there grounds for active hostilities. At this point, the Muslim ruler is required to wage war against them. Muslim theorists saw force as a necessary evil, to be used as a means of extending the territory of Islam. *Jihad* thus became a tool in the quest for peace.

In addition, the jurists insisted that the war must be conducted in accordance with Islamic values. Muslims were to discriminate between the guilty and the innocent and they were to use the minimum force required for victory. Proportionality and the distinction

between combatants and non-combatants were important to observe since the Qur'an states, "Slay not life that God has made sacred (6:151)."

The jurists had few guidelines to follow in their pronouncements of the justifications and rules of engagement of war. This can be discerned from the fact that they expressed a myriad of opinions on *siyar* and *jihad*. They differed among themselves as to whether Muslims could fight non-Muslims due merely to their disbelief or because of the possible threat they posed. Many argued that they could only be fought if they posed a danger to the Muslim polity. Early jurists like Abu Hanifa and al-Shaybani did not state that *jihad* was to be waged against non-Muslims based on their disbelief.¹⁵ They advised the imam that war was to be waged only when the inhabitants of *dar al-harb* were in conflict with *dar al-Islam*. Sufyan al-Thawri, an eminent jurist of the eighth century, concurred with this ruling.¹⁶

Al-Shafi'i, however, saw things differently. He claimed that *jihad* was to be waged on unbelievers for their disbelief.¹⁷ Thus, for him, the distinction between offensive and defensive war was non-existent. Al-Sarakhsi, the commentator on al-Shaybani's work, concurred with al-Shafi'i. He states that fighting the unbelievers was, "a duty enjoined until the end of time."¹⁸ Al-Sarakhsi further maintains that *jihad* and the commandment to fight had been revealed in stages... (the final stage being) the absolute order to fight (nonbelievers)... this means an obligation, but this obligation is meant to exalt the religion (of Islam) and to subdue the associators.¹⁹ Another Shafi'i jurist, Abu Ishaq Shirazi (d. 1083) states that Muslims should wage a war at least once a year against non-Muslims so as to stop them from transgressing against Muslims.²⁰

According to Ibn Rushd (d. 1198), the basis of the controversy among jurists was the apparent discrepancy between the Qur'an's "verses of peace" and "verses of the sword." Verse 8:61 "If they incline toward peace, you incline toward it, and trust in God: verily, He alone is all-hearing, all-knowing" is evidently opposed by 9:5, "And so, when the sacred months are over, slay the polytheists wherever you find them, and take them captive, and besiege them, and lie in wait for them at every conceivable place." Ibn Rushd further states that some jurists claimed the sword verses were to be read in context with the peace verses, and that the ruler (imam) was therefore entitled to suspend *jihad* whenever he deemed it appropriate.²¹ Others read the sword verses as requiring continual warfare against unbelievers until they were incorporated within *dar al-Islam*.

Jurists like the aforementioned al-Sarakhsi invoked the interpretive principle of "abrogation" to support their conclusion that because the sword verses had been revealed *after* the peace verses, the command to wage *jihad* against non-Muslims supersedes the permission to engage in peaceful relations.²² In the final analysis, al-Sarakhsi states, that it is obligatory to fight Arab polytheists and other non-Muslims until they convert.

The preceding discussion suggests that the medieval juristic literature is characterized by fundamental disagreements on the grounds for war. There is a lack of consensus among Muslim scholars regarding religious pluralism or juridical pronouncements concerning interaction with minorities and other states. Evidently, issues such as *dar al-Islam* and *dar al-harb* and the treatment of minorities were still in the formative stages in the eighth and ninth centuries.

Muslim jurists who tried to rationalize the military conquests saw the sword verses as providing the legal rationale for their pronouncements regulating conduct with non-Muslims. To justify their conception of *jihad* as an ongoing war that would incorporate *dar al-harb* into *dar al-Islam*, these jurists held that 124 Qur'anic tolerant verses (called *ayat al-tasamuh*) were abrogated by verse 9:5 the sword verse, and other verses like it.²³ The sword verses provided the rationale for formulating legal injunctions to regulate and perpetuate hostile relations with non-Muslims.²⁴ This rationale also had the effect of obliterating the distinction between offensive and defensive *jihad* since, henceforth, all *jihad* was seen as just.²⁵

Those jurists who opposed this interpretation maintained that verses that require tolerance like 2:190 and 2:256 reflect the general moral tenor of the Qur'an, applicable at all times whereas the sword verses (9:5 and 9:123) refer to the historical battles of Muhammad against his adversaries. The later verses were specific to the time of the Prophet.

Scholars who came afterwards, until the fall of Baghdad at the hands of the Mongols in the thirteenth century, accepted the *jihad* as just war without regard to its offensive or defensive character. Under the continuing threat from the Crusaders and Mongols, Ibn Taymiyya reinterpreted the classical doctrine on *jihad*. He stated that *jihad* against unbelievers was obligatory only when Muslims were attacked.²⁶ In other words, he reinstated the division between offensive and defensive war. He also upheld the Qur'anic notion of freedom of conscience by stating that unbelievers should not be killed due to their disbelief.²⁷

Jihad became an important instrument in the sacralization of the political order in Islam and symbolized the mobilization of religion for political and expansionist ends. This was in stark contrast to the Qur'anic vision which sanctioned *jihad* only in defense or to fight oppression.²⁸ The limited justification of *jihad* in the Qur'an was broadened to include spreading the boundaries of Islam, which after all, was assumed to embody the Qur'anic principles of justice and equity. In reality, the motivation for *jihad*, in many cases, was territorial expansion, which required religious validation. This was sought in the very scripture that prohibited coercion in matters pertaining to faith and territorial transgression. The exegesis of specific passages of the scripture provided the legitimacy to undertake this venture.

The study of juridical literature on *jihad* indicates that there was more discourse on war than on peace. This was probably because the Muslim empire needed religious validation in its confrontation with the non-Muslim "other." The fact that the discussion on *jihad* was interwoven to the political circumstances of the times is corroborated by the fact that, in their formulation of rulings on *jihad*, the jurists often deduced laws based on the practical necessity of the Muslim community. Thus, for example, in their discussion on whether an imam could sign a peace treaty with a non-Muslim state, Shafi'i jurists left the final decision to the imam who would be the best judge as to whether *jihad* or a temporary peace agreement would best serve the interest of the community. The preceding discussion on *jihad* also suggests that the discourse on *siyar* was, like the *shari'a* itself, at an embryonic stage. This can be adduced by the wide range of views that were expressed by the jurists regarding the engagement with a non-Muslim entity.

Peace in the Juridical Literature

There has been limited discourse on peace in the exegetical and juridical literature. For the jurists, the discourse on peace was set in the context of a general theory, which presupposed that peaceful coexistence with a Muslim state was possible only when *dar al-harb* was subdued. Anything less than that was construed as seen as a compromise of Muslim ascendancy and an act of relinquishing power.

When the jurists discussed peaceful coexistence, it was in the context of measures that would allow for a temporary cessation of hostilities. Shafi'i jurists interposed, between *dar al-Islam* and *dar al-harb*, a third category, *dar al-sulh*, the abode of truce. *Dar al-sulh* refers to the territories where peace exists with an Islamic state based on treaties, alliances, and cooperation. During the period of the truce, *dar al-sulh* would have to pay the *jizya* or cede a portion of its territory.²⁹

According to al-Shafi'i, the imam could contract the truce if the welfare of the Muslims required it. However, al-Shafi'i's theory only suspended, rather than eliminated, warfare. Based on the precedent established by the Prophet's agreement with the Meccan tribes at al-Hudaybiyya in 630 C.E., the truce could not exceed ten years.

The jurists were also divided on the question of signing the period of the peace treaty. Malik b. Anas (d. 795) and Ahmad b. Hanbal (d. 855), two prominent jurists, supported the notion of an indefinite peace treaty as long as it served the interests of the Muslim community.³⁰ However, not all jurists recognized the existence of *dar al-sulh*. The Hanafis did not accept it whereas Ibn Taymiyya argued against putting a restriction on the length of the peace treaty.³¹

The jurists conceived of another scenario for temporary peace. One of the most important aspects of *siyar* was the guarantee of free passage or security (*aman*) which any Muslim could grant to a visitor from *dar al-harb* (called *harbi*).³² The *aman* is a pledge of security through which the *harbi* would be entitled to protection for up to a year while he is in *dar al-Islam*. The holder of the *aman* (called *musta'min*) is not considered to be a *dhimmi*, neither is he required to pay the *jizya*. The *aman* can be renewed at the end of the period if he agrees to pay the *jizya* and to become a *dhimmi*. The *aman* suspended, albeit temporarily, the state of hostilities.

Despite the juridical rulings on Muslim and non-Muslim relations, there have been many instances where Muslims have co-existed peacefully with non-Muslims. Indeed, to portray Islam as intrinsically violent and incompatible with Western values is to ignore Muslim engagement with and contribution to Western civilization. The tendency to view Islam through violence and militant lens distorts the view that Islam has a rich cultural heritage and precepts that necessitate co-existence with the other. Spain is a great example where Muslims not only co-existed peacefully with Christians and Jews, but also protected them and shared their scientific achievements with their counterparts. For much of Islamic history, Muslim societies have been remarkably open to the outside world.³³

The vast expanse of the Muslim world inevitably meant that it came to encompass a variety of civilizational and cultural forms. By the tenth and eleventh centuries, the Muslim-

majority world showed a remarkable variety of institutional forms from North Africa to South Asia, up to and including the hinterland of the Chinese empire, and soon thereafter emerged as a dominant force in Southeast Asia. Historically, Islam has exhibited much tolerance to members of other faith communities such as in Spain, India, the holy lands, Turkey, Africa, and Indonesia.

Due to the status and protection the Qur'an accorded to the people of the book, violence and genocide against them became virtually impossible. Jews in Islamdom did not face a tradition of anti-semitism even though the *dhimmis* in general were regarded as second-class citizens. They had full religious liberty and were allowed to manage their own affairs. They were also able to participate in mainstream culture and commerce. This is one reason why Sephardic Jews were treated much better by the Muslims than Ashkenazim were treated by Christians. As Marc Gopin states, "there is a qualitative, not just quantitative difference between the two."³⁴

Challenges for Muslims in Contemporary Times

Muslim discourse on war and peace has been defined primarily by the juridical literature. Especially after the events of September 11, 2001, we are witnessing a period of reinterpretation and redefinition of the notion of *jihad* in the Muslim community. It has been argued that the Qur'an offers a distinctly modern perspective on tolerance and respect in a multi-ethnic, multi-communal world.³⁵ The challenge for Muslims in contemporary times is to recover the tolerance and means for peaceful coexistence through the Qur'an rather than the juridical and exegetical understanding which, as noted, were formulated to assert the subjugation of the "other" in a particular historical context. As they engage in a re-examination of traditional exegesis, the point of departure for Muslims has to be the Qur'an itself rather than the multi-faceted and multi-layered scholarly discourse that has accumulated since the eighth century.

The moral tenor of Qur'an shows that it wants to engage humanity in a moral discourse where all human beings can connect with the Qur'an and with each other based on universal values. As Sohail Hashmi argues, there are few ethical works that outline the Qur'anic vision of coexistence or warfare. Muslims need to disentangle Islamic ethics from medieval Islamic law and to re-examine the Qur'anic pronouncement on war and peace in light of its ethical axioms.³⁶ Thus, the challenge for Muslims is to draw on this Qur'anic vision so as to develop just interreligious and intercultural relationships in a world of cultural and religious diversity.

Muslims are also confronted with the challenge of contextual hermeneutics in dealing with the pronouncements of the Qur'an on specific legal issues like hostility and warfare. Verses on *jihad* must be understood taking into account the particular conditions of persecution and oppression in which they were revealed. Returning to the Qur'an and prophetic traditions in their proper historical context is often circumvented by the juridical interpretations that promoted the hegemonic interests of the Islamic state ignoring, in the name of Islam, the ecumenical and universal message of the Qur'an. Muslim scholars and jurists have to engage in hermeneutic and interpretive exercises to provide a coherent

re-evaluation of classical formulations and to reassert the Qur'anic ecumenical and inclusivist vision of peace. Stated differently, Muslims need to go beyond the classical formulation on *dhimmis*, *siyar*, and non-believers. Boundaries have to be re-mapped since the delineation of *dar al-Islam* and *dar al-harb* is no longer applicable. Furthermore, Muslims must articulate a theory of international relations that will incorporate notions of dignity, freedom of conscience, rights of minorities, and gender equality based on the notion of universal moral values.

A major impediment to this approach is that many Muslims reject the argument that the juridical decisions were interwoven to the political, cultural, or historical circumstances in the eighth century. They refuse to acknowledge that while the Qur'an is a fixed text, the interpretive applications of its revelations can vary with the changing realities of history. Traditionalists maintain that Islamic law, as it was formulated by the jurists in the first three centuries of Islamic history, was in strict conformity with the divine will expressed in the Qur'an and the tradition. Thus, normative textual sources are treated as timeless and sacred rather than anchored to a specific historical context. This contention of the traditionalists is challenged by the fact that there was much disputation on what constituted the divine will among the classical jurists themselves and that they proffered a wide range of views on the issues they were confronted with.

As Muslims search for ways to chart out peaceful coexistence with others, they also need to reevaluate their normative texts. This exercise is contingent on recognizing that Muslims are not bound to erstwhile juridical or exegetical hermeneutics. Communities often construct a paradigmatic interpretation on the text and assert it on the readers. Once it is defined, the authoritative legacy of the text is transmitted to the next group of scholars and becomes entrenched as the normative and "authentic" position. Gradually, the texts construct an increasingly restrictive and specific well-defined position on an issue. The contents of the sacred texts are frequently less important than the social and historical settings in which they are interpreted.³⁷

The reading of a text is interwoven with the closing of the interpretive process, restricting, thereby, the text to a specific determination. This determination is then submitted as the final and only possible interpretation of the text.³⁸ In this sense, juridical hermeneutics are no different from the interpretive activities evident in other fields. The interpretive strategy can shape both future readings and the texts themselves, thus constructing the texts rather than arising from them. Hence, there is a need for Muslims to separate the voice of God from the voice of human beings, and to differentiate between the Qur'anic vision and the socio-political context in which that vision was interpreted and articulated by classical and medieval exegetes.

Contemporary Muslims are confronted with hegemonic values of the past and the emerging political reality that often challenges the applicability of those values. The tension between the peaceful and militant strains of Islam can be resolved only through the reexamination of the specific contexts of the rulings and the ways in which they were conditioned by the times. This re-interpretive task demands that Muslims undertake the task of re-evaluating the classical and medieval juridical corpus.

Conclusion

In conclusion, it is correct to state that spiritually, the Qur'an accommodated and extended salvific space to other monotheistic faiths. Muslim jurists not only passed the verdict of non-belief to them but also treated adherents of these faith groups as second class citizens, a position that has no basis in the Qur'an.

Peace requires changes in our world-views. The quest for peace challenges us to reevaluate how we have viewed the other. It also necessitates a shift in paradigm, asking us to embrace those we have previously excluded or demonized. The challenge is to seek opportunities for interpretations that can make a community see the enemy in a new way. This is an important measure to establish peaceful relationship.³⁹

There is a concurrent requirement to move away from defining ourselves over and above an enemy "other." The starting point is to re-examine traditions that draw boundaries of exclusion and marginalization. Peaceful coexistence is only possible when we no longer see a group as the other but as a concrete human community with ancient values and norms. Ultimately, peaceful relations between human beings is grounded on a community's construction of an order based on egalitarianism, justice, and a concern for the moral and social well-being of all its citizens.

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12. See al-Shaybani, *Kitab al-Siyar* (The Islamic Law of Nations: Shaybani's *Siyar*), trans. Majid Khadduri (Baltimore, The Johns Hopkins Press, 1966).

13. Sohail Hashmi, "Islamic Ethics in International Society," in *Islamic Political Ethics: Civil Society, Pluralism and Conflict*, ed. Sohail Hashmi (Princeton: Princeton University Press, 2002), 160.
14. Khaled Abou El Fadl, "Between Functionalism and Morality: The Juristic Debates on the Conduct of War," in *Islamic Ethics of Life: Abortion, War and Euthanasia*, ed. Jonathan Brockopp (Columbia, University of South Carolina Press, 2003), 114.
15. Majid Khadduri, *The Islamic Concept of Justice* (Baltimore: The Johns Hopkins University Press, 1984), 165.
16. Abu Sulayman, "Islamic Jurisprudence and Modern Needs," in *Peace and Conflict Resolution in Islam*, ed. Said *et al.*, 66.
17. Muhammad al-Idris al-Shafi 'i, *Kitab al-Umm* (Beirut: Dar al-Fikr, 1990), 4:84-85.
18. Al-Sarakhsi, *Kitab al-Mabsut*, 2-3.
19. Abu Sulayman, "Islamic Jurisprudence and Modern Needs," in *Peace and Conflict Resolution*, ed. Said *et al.*, 66.
20. Abu Ishaq Firuzabadhi al-Shirazi, *al-Muhadhdhab fi fiqh al-Imam al-Shafi 'i* (Cairo: Matba 'at Mustafa al-Babi al-Halabi, 1976), 2:291.
21. Sohail Hashmi, "Interpreting the Islamic Ethics of War and Peace," in *Islamic Political Ethics*, ed. Sohail Hashmi, 206.
22. *Ibid.*
23. Sohail Hashmi, "Islamic Ethics in International Society," in *Islamic Political Ethics*, ed. Sohail Hashmi, 168; Abou El Fadl, in *The Place of Tolerance in Islam*, ed. Joshua Cohen and Ian Lague (Boston: Beacon Press, 2002), 99.
24. See Reuven Firestone, *Jihad: The Origin of Holy War in Islam* (Oxford: Oxford University Press, 1999) for a discussion on the sword verses and *jihad* in the Qur'an.
25. In contrast to the Sunnis, the Shi'is restrict the expansionist dimension of war. Whereas for the Sunnis the caliph is empowered to declare and lead the *jihad*, the Shi'is declare that the functions of calling people to respond to God's guidance and fighting those who undermine the creation of a just order is restricted to the figure of an infallible imam or his deputy. In the absence of the imam, offensive *jihad* is suspended until he reappears. This juridical ruling is based on the premise that infallibility protects the imam from destroying or commanding to destroy any life without proper justification. See Liyakatali Takim, "Islam-Shi'a" in *Encyclopedia of Religion and War* (Routledge, forthcoming in Winter 2004).
26. Khadduri, *The Islamic Concept of Justice*, 169.
27. *Ibid.*
28. See John Esposito, *Unholy War* (Oxford: Oxford University Press, 2002); Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford: Oxford University Press, 2001); Liyakatali Takim, "Peace and Conflict Resolution in the Islamic Tradition" in *Religion, Terrorism and Globalization, Nonviolence: A New Agenda*, ed. K. Kuriakose (New York: Nova Science Publishers), 2006.
29. Al-Shafi 'i, *Kitab al-Umm*, 4:103-04.
30. M. Raquibuz Zaman, "Islamic Perspectives on Territorial Boundaries," in *Islamic Political Ethics*, ed. Sohail Hashmi, 94.

31. Abou El Fadl, "Between Morality and Functionality," 120.
32. There is a difference among jurists as to who can give the *aman*. See Khadduri, *War and Peace*, 164-65.
33. Eickelman, "Islam and Ethical Pluralism," in *Islamic Political Ethics*, ed. Sohail Hashmi, 118.
34. Marc Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford: Oxford University Press, 2002), 107.
35. Eickelman, "Islam and Ethical Pluralism," in *Islamic Political Ethics*, ed. Sohail Hashmi, 115.
36. Sohail Hashmi, "Islamic Ethics in International Society," in *Islamic Political Ethics*, ed. Sohail Hashmi, 148.
37. Stanley Kurtz, "Text and Context," in *The Place of Tolerance*, ed. Joshua Cohen and Ian Lague, 51.
38. Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), 92.
39. See the example cited by Gopin, *Holy War, Holy Peace*, 44.