

Just War and Jihad

A Cross-cultural Study of Modern Western and Islamic Just
War Traditions

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Abstract

Begreppet *jihad* har fått en stor uppmärksamhet in massmedia den senaste tiden. Det är ett mångdimensionellt, men också ett ofta missförstått, begrepp. Den här studien syftar till att belysa detta begrepp genom att jämföra det med den västerländska teorin om det rättfärdiga kriget, en teori som upplevt något av en renässans the senaste decennierna. Min hypotes är att det finns vissa grundläggande likheter mellan dem, och jag bygger det på antagandet att vissa frågor i krig är så grundläggande att de korsar alla kulturella gränser. Studien är en komparativ studie där jag jämför ett perspektiv på *jihad* med en standardvariant av den västerländska teorin. Detta perspektiv är framtaget genom att ha jämfört moderna idéer om *jihad* med äldre.

Min hypotes stöds delvis. Vid frågor som rör handlingar i krig, *jus in bello*, kan vi se stora likheter, framför allt om vi ser till moderna muslimska synvinklar på *jihad*. Resultatet är mer tvetydigt om vi ser till handlingar innan krig, *jus ad bellum*. Vissa grundläggande likheter finns i vilka frågor som berörs, men innehållet är olika.

Nyckelord: Islam, the West, Jihad, Just War, Cross-cultural

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1 Introduction

The *Just War* theory have experienced something of a renaissance as a political theory in the past two decades, spurred to some extent by the 1977 book *Just and Unjust Wars* written by the Princeton Professor Michael Walzer. Its most recent boost comes from the discussion surrounding the War on Terror¹, in particular the notion of preventive warfare. The discussion surrounding it has centered on President George W. Bush's 2002 *National Security Strategy* where he articulated what would be called the *Bush Doctrine*, where he gives the US the right to strike against enemies before an imminent threat has presented itself.

The discussions around Just War and the War on Terror also highlights another important point; the Just War tradition, as it is commonly understood, is a distinctively Western tradition, having its roots in Christian and Enlightenment thought and philosophy. As John Kelsay describes it "[t]he development of just war thinking is intimately connected with the triumph of Christianity, the phenomenon of patriarchy, and the world hegemony of nation-states in which Caucasians hold power." (Kelsay in Kelsay (ed.) *et al.* 1991 p. XIV). Other cultures have developed their own views on warfare independently from Western thought. While one doesn't have to accept Samuel Huntingtons view of a *Clash of Civilizations*, the War on Terror still highlights differences regarding the justifications of warfare between cultures. With the renewed interests in the Just War theory, a interest in these cultural differences have also arisen. As Paul Robinson put it "[a]cross the Western world, theorists are breathing new life into an old tradition of thought, and for the first time are also seriously considering the alternate perspectives of other cultures in establishing the rules of war." (Robinson in Robinson (ed.) 2003 p. 1). This is very noticeable if we look at how the different actors in the War on Terror justify their actions.

The concept of *Jihad* in particular have appeared frequently in massmedia. While it's often loosely translated as "Holy War", Jihad – Or *Jihad fi sabil Allah*, "striving in the path of Allah" - is a multifaceted term which involve more than just warfare. It is, on the other hand, the warfare aspect of Jihad that I will focus on in this study. The question raised is: Can we see any similarities between Western and Islamic concepts of the just war? My hypothesis is that despite diverging traditions, basic similarities can be seen between the two traditions. I base this hypothesis on the assumption that some concerns, like the justifications of war and the discrimination between guilty and innocent, crosses cultures and derives from the function of social human life. Any culture is forced to address these issues one way or another to function properly.

¹ It's debatable if "The War on Terror" can be regarded as a war in the conventional sense of the word. Despite this I'm going to use the expression as it is a commonly accepted one.

I will start out by presenting the general outline of the study and the considerations I've taken during the work in chapter 2. This chapter will also include some of the limitations of my particular study.

In chapter 3 I will describe the Western Just War theory and its elements. Some of these, like just cause and intention, will get more attention as they are issues where opinions diverges greatly. These elements will then be the ones I will compare with in the next chapter.

Chapter 4 will make up the actual analysis where I will compare the Islamic concept of Jihad with the Western Just War theory I've described in the chapter before. The comparison will be made along the general outline of the Western Just War theory. My focus will be the overall differences and similarities between the traditions, not specific details. This will, of course, lead to some very general conclusions.

Finally, in chapter 5 the conclusions I've drawn will be presented. Here we will be able to see more clearly the differences and similarities.

2 Method and material

In this study I will compare the Islamic concept of the just war, *jihad*, with the Western Just War theory. The focus will be on *jihad*, whereas the Western theory will only be described well enough to make a comparison meaningful. As such, I won't delve too deep into the often vivid discussions surrounding it. I will, on the other hand, be forced to take a stand on certain issues in order to have a theory to compare with. This is most noticeable when it comes to the just causes of going to war.

The comparison itself will be made along six lines; 1) Just cause and intention, 2) Competent authority, 3) Proportionality before war, 4) Last resort, 5) Discrimination, and 6) Proportionality in war. The content of each of these will be described more thoroughly in chapter 3. All of these have been selected because they are standard elements in Western Just War theory and frequently occurs in debates. We should keep in mind, though, that the Just War theory is not a specific theory. Rather, it is a broad tradition dealing with morality and warfare. The same thing can be said about *jihad*. Other ideas on what a just war must include exists, but the six elements above are still the most common ones.

Chapter 4 will make up the bulk of my study. Here I will analyze *jihad* from two perspectives; one early Islamic and Medieval, and one more modern. From these two I will then try to draw a conclusion on what Islamic scholars and philosophers says about the justifications of going to war and what is acceptable actions in war. This I will then compare to the Western Just War theory in order to discover any similarities. There are also some differences between the two major sects in Islam, Shia and Sunni, and those will be pointed out where it is relevant.

My approach here have been chosen for a specific reason. While the Western Just War tradition have it's roots in the Christian theology and philosophy of thinkers like Augustine, the modern version is largely secular. This is not the case for Islam and Jihad where early Islamic sources play a larger and more direct role than their Western equivalents does in the West.

As material for this study I will use relevant literature in the fields of Just War theory, both Western and Islamic. It is beyond the scope of this study to analyze the main sources directly. Instead, I will have to rely on what other have written in the field. As such, the material have already been "interpreted" once, and there is always a risk that some important parts have been lost in the translation. Despite this, the literature is sufficient as my goal in this study is of a more generalizing nature where individual errors or mistranslations might not play a major role.

Finally, there are a few things I have taken into account while making this study. First, as Fred M. Donner argues, the Islamic juridical tradition is not the only thing that have shaped the Islamic attitude towards war, the cultural background also plays a role. (Donner in Kelsay (red.) *et al.* 1991 p. 32-33).

Donner further says that the latter have not been given the same scholarly attention as the former. (*ibid.*) Because of this, the juridical tradition will get more attention in my study compared to other, more culturally oriented factors.

Second, I will take the Western Just War tradition for granted and then compare the Islamic tradition with it. I am aware there is a certain risk of cultural myopia here, when one tradition is taken as a standard to measure other by. However, the Western Just War theory the by far dominant one internationally and forms the basis for such documents as the *United Nations Charter*. With this in mind, I argue that it is reasonable to use the Western theory as a standard.

3 Western Just War Theory

Let us first look at the Western Just War theory. This theory is divided into two parts; *jus ad bellum* and *jus in bello*². The first part deals with decisions made before going to war, while the second part with decisions during war. Prior to the modern age, not much attention was given to *jus in bello* compared to *jus ad bellum* by just war thinkers (Lammers in Johnson (ed.) *et al.* 1990 p. 64). This part of the tradition got more and more attention, and by the 16th century things had changed and thinkers like Francisco de Victoria spent a great deal of ink concerning *jus in bello* (*ibid.*) Today it is an issue with fairly well-established rules, as we will see later.

3.1 Jus ad bellum

Just cause and intention

The just causes of going to war has historically been a contentious issue in the Western tradition. Just causes have ranged from self-defence to punishment and recovery of unjustly stolen property. Since to the establishment of the *League of Nations* and the *United Nations*, and the development of international law and conventions, a much more limited form has been the norm. This new convention has focused mainly on self-defence as described in the United Nations Charter, Article 2(4) and 51³. The restrictive nature of the U.N. Charter has been faced with criticism, while some scholars, like Whitley Kaufman, have argued that the Charter actually gives the right to wage war for more reasons than mere self-defence as long as the decision to go to war is made by the Security Council. (Kaufman 2005 p. 36).

The United Nations Charter, combined with what Michael Walzer calls the *legalist paradigm*, constitutes the prevailing idea of just war (Luban 2004 p. 209). The legalist paradigm consists of the following points:

1. There exist an international society of independent states.
2. This international society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty.

² A third part called *jus post bellum*, justice after war, has recently been added to this duo, where attention is put at reconstruction after war. *Jus post bellum* won't be addressed in this study.

³ See Appendix

3. Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.
4. Aggression justifies two kinds of violent response: a war of self-defence by the victim and a war of law enforcement by the victim and any other member of international society.
5. Nothing but aggression can justify war.
6. Once the aggressor state has been militarily repulsed, it can also be punished.

(Walzer 1992 p. 61-63)

As point four states, there are two types of just causes of war according to the legalist paradigm: self-defence and law enforcement. Other causes has by some been conceived as just, like *humanitarian intervention* and *anticipatory wars*.

I will start with humanitarian intervention. Simply defined "[h]umanitarian intervention is an act that seeks to intervene to stop a government murdering its own people." (Bellamy *et al* in Baylis *et al* 2001 p. 472). Whether humanitarian intervention can be a just cause for war is a frequently debated issue. Opponents on these kind of interventions often question the motives of the interveners as humanitarian and the selectivity of responses as arguments against, while proponents of interventions refer to the protection of human rights. The Preamble, as well as Article 1(3), 55 and 56⁴ of the U.N. Charter may serve as a reference to this. This would in some way put humanitarian intervention under the *law enforcement* label above, although in a somewhat uneasy position; the issue is a contentious one. Even if you accept interventions as a just cause for war, there are generally conditions put forth that need to be met. Jeff McMahan, for example, argues that the intervention has to be either requested by the beneficiaries or there should be compelling evidence of them welcoming such a thing (McMahan 2005 p. 13).

The other alternative proposed just cause of war are anticipatory wars. Anticipatory wars are generally divided into two separate parts; *preemptive wars* and *preventive wars*. The former is a first strike when a threat has become imminent, while the latter is an attack when an imminent threat has not yet revealed itself. Israels first strike in the *Six-Day War* is often held up as an example of a preemptive war. Even though the difference between preemptive and preventive wars is a matter of degree (Kaufman 2005 p. 30). I would argue that the imminence factor is important to separate the two. I would put preemptive wars within the self-defence category assuming, of course, the threat is actually imminent.

The issue of preventive wars, on the other hand, is more complicated one. According to Douglas P. Lackey, Article 2(4) and 51 of the U.N. Charter rules out anticipatory wars altogether (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 273). However, one could argue that in some situations, situations that Walzer

calls *supreme emergency*⁵, preventive wars might be warranted. Supreme emergency is a state where there is an imminent danger and the danger is of such a nature to warrant extreme measure. Both of these conditions needs to be met (Walzer 1992 p. 251-255). Despite this, I opt for a more traditional and limited approach to Just War in this regard, and will exclude preventive actions as a just cause.

The *right intention* criteria, while important for medieval Just War theorists, play a less important role in the modern era (Lammers in Johnson *et al.* 1990 p. 59). In medieval thought, the right intention criteria was connected to the determination of motives by the participants in war, to determine who was seeking peace and who fought only for self-gain or out of hatred. As Lammers put it: "[i]n that context, subjective hatred of the enemy was evidence of wrong intention and was not morally permitted, nor was revenge." (*ibid.*). That the right intention criteria have lost some of its importance in the modern Just War discourse does not mean that it is completely forgotten. Lackey, for example, argues for its importance and says: "[i]t follows from this qualified insistence on moral motivation in the political leadership that political leaders must be able to justify their decision on moral ground. [...] [f]or those who let slip the dogs of war, it is not sufficient that things turn out for the best." (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 271). The importance of right intention is also noticeable in Islam, particularly in regards to competent authority.

My model I will use to compare the Islamic tradition with will thus be; self-defence, law enforcement, preemptive wars and humanitarian interventions as just causes. Preventive wars will be excluded.

Competent authority

A just war can only be initiated by a competent and legitimate authority. What has been considered a competent authority have changed over time but the purpose of the criteria is largely the same; to limit warfare by putting a limit of who can initiate a war. This is to separate wars from other forms of violence. As Lackey puts it: "[j]ust war must first of all, be war." (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 269).

In a medieval context, only those with no political superiors were considered competent authorities. This would exclude ordinary knights and many petty princes (Lammers in Johnson *et al.* 1990 p. 59). In the modern context, the 1977 *Protocol Additional to the Geneva Conventions of 1949 (Protocol II)*⁶ gives an idea on the competent authority criteria in the modern age by describing where the Geneva Conventions apply. The Protocol is to apply in conflicts between the armed forces of a "High Contracting Party" (a signatory), and "dissident armed forces or other organized armed groups which, under responsible command,

⁵ The term *supreme emergency* originally comes from Winston Churchill and deals with Britains situation during the World War II.

⁶ Full title: *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977.

exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.” (Protocol II, Article 1.1). However, the Protocol doesn't apply to riots and other isolated or sporadic acts of violence, and these are not to be considered armed conflicts (Protocol II, Article 1.2). Since the Protocol deals with internal conflicts between governments, which are generally considered competent authorities, and other armed groups we can get an indication on where the boundaries are drawn. The requirement of being able to “carry out sustained and concerted military operations”, for example, would exclude terrorist targeting civilians from the status as a military force (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 271). These would instead be considered criminals.

The United Nations Security Council presents a special case here. A parallel is sometimes drawn between the role of the Security Council and the role of a domestic government (Kaufman 2005 p. 32-37). A domestic government has monopoly on all forms of violence except self-defence. By signing the United Nations Charter, a similar relationship as that between a citizen and the government can be said to exist between a nation-state and the Security Council. Criticism of the effectivity of the Security Council are abound, but as Kaufman concludes: “[d]espite its limitations, the UN is generally recognized as the de facto legal authority governing the use of international force.” (Kaufman 2005 p. 36). The Security Council should thus be regarded as a competent authority in addition to the governments of modern nation-states and some armed groups.

Proportionality before war

The criteria of proportionality says that a war cannot be just if the expected evils of going to war is greater than the expected evils of not going to war (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 274). What these “evils” are can be difficult to determine as a common ground might be difficult to achieve. How we should compare these evils with each other is also an issue, but in the end we cannot escape any of these issues if we want to wage a just war.

A similar concept to proportionality can be found in what the *United States Catholics Bishops Conference* calls *comparative justice* in their 1983 *The Challenge of Peace: God's Promise and our Response*. The question asked here is if the rights and values at stakes in an impending conflict are valuable enough to warrant war and the killings it will involve (U.S. Bishops in Elshtain (ed.) 1992 p. 99-100).

Last resort

The fourth *jus ad bellum* criteria in my analysis is that a war should only be fought when all other options have been exhausted. This criteria is pretty straightforward and its purpose is obviously to limit instances of war. However,

some critics claim that the rule doesn't work in a modern context where warfare can be initiated much quicker than in the past (Lammers in Johnson *et al.* 1990 p. 61).

3.2 Jus in bello

Discrimination

The principle of discrimination, simply put, means that noncombatants may not be intentionally targeted in a war. The keyword here is "intentional"; accidental killings of noncombatants may be accepted as a unfortunate effect of war.

Who then are noncombatants? The modern consensus on what constitutes military targets is "servicemen, weapons, and supplies; the ships and vehicles that transport them; and factories and workers that produce them." (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 276). Everything else is civilian and noncombatant. Note, however, that workers in munitions factories are valid military targets according to this definition, assuming they are in the factory at the point of attack. To put the definition of noncombatants a bit differently, they are: "generally speaking, classes of people engaged in occupations that they would perform whether or not a war were taking place, or services rendered to combatants both in war and out, are considered immune from direct attack or targeting." (Phillips in Johnson *et al.* 1990 p. 186).

Proportionality in war

Just as the principle proportionality need to be considered before going to war, it also need to be considered *during* war. While the *jus ad bellum* proportionality was mainly a political one dealing with political decisions, the *jus in bello* one is a military one. In short, it means that the destruction caused in a military objective must be in proportion to its importance (Lackey in Collins-Chobanian (ed.) *et al.* 1998 p. 276), alternatively, in proportion to the threat to the attacker (Phillips in Johnson *et al.* 1990 p. 182). Of particular interest here is weapons of mass destruction. These are often regarded as causing an disproportionate amount of damage.

4 Jihad fī sabīl Allah

Islamic conceptions on warfare are as old as Islam itself. As such, Islamic scholars spent less time discussing *jus ad bellum* than *jus in bello* criteria. This marks a major difference from the contemporary Christian Just War tradition where the opposite applied. An explanation given to this is that Christianity in its early days stood outside most of the political power of the time, and as such warfare did not play a major role in its cosmology. Islam, on the other hand, emerged from a political environment and had to deal with political issues, like warfare, from the very beginning (Martin in Johnson (ed.) *et al.* 1991 p. 97-98).

In contemporary Islamic discourse on war, the focus has shifted from *jus in bello* to *jus ad bellum* (Hashmi in Brockopp (ed.) 2003 p. 129; Mayer in Johnson (ed.) *et al.* 1991 p. 197). A great help in describing the modern views has been Sohail H. Hashmi's chapter *Saving and Taking Lives in War* in Jonathan E. Brockopp's book *Islamic Ethics of Life* (Brockopp 2003). Here, Hashmi discusses three modern, 20th century scholars of Islam and their view on *jihad*. The scholars are Abu al-A'la Mawdudi, the founder of the Islamic party *Jama'at-i Islami* on the Indian subcontinent; Muhammad Hamidullah, professor of Islamic Law and history at Osmania University and Sorbonne University; and finally Wahba al-Zuhayli, professor at Islamic jurisprudence at the University of Damascus.

To understand the Islamic outlook on war, we first need to understand Islamic cosmology. A common distinction here is the one between *dar al-islam* ("abode of Islam") and *dar al-harb* ("abode of war"), a distinction that emerged from eight century juristic tradition. *Dar al-islam* connotes territory under Muslim rule and where Islamic faith reigns, whereas *dar al-harb* is territory not yet under this rule. As we will see later, this distinction has a great impact on early and medieval Islamic thought on war.

4.1 Just cause and intention

Medieval Sunni jurists divided warfare into two groups; wars waged against other Muslims and wars against non-Muslims. The second group is further divided into defensive wars and wars waged to expand the domain of Islam (Hashmi in Brockopp (ed.) 2003 p. 132).

Among the Islamic jurists, conflicts between Muslims were discussed in the context of rebels, apostates, and robbers and pirates (*ibid.*). The case of rebels is of particular interest, especially a form of rebellion regulated under rules called *Akham al-Bughat*, rebellion against the Islamic state. A rebel here, a *baghi*, is someone who commits an act of rebellion or resistance (*khuruj*), for reasons of

interpretative differences or plausible interpretation on Islamic sources (*ta'wil*), and while holding some form of power in an organized group (*shauka*). It's required that the two criteria *ta'wil* and *shauka* are met for *Akham al-Bughat* to apply (El Fadl in Johnson (ed.) *et al.* 1990 p. 155-160). As we will see later, special treatment is granted to participants in a *Akham al-Bugha* war and Muslims who fight other Muslims for any other reason, like tribalism or greed, are not entitled to these.

The aim in an *Akham al-Bughat* war is reconciliation between the warring parts, not the elimination of one side. This principle is complemented by three other principles; "(1) the duty of imposing order, (2) the duty of enjoining the good and forbid the evil, and (3) the duty to obey God." (El Fadl in Johnson (ed.) *et al.* 1990 p. 153) These principles make up the just cause of war in this special kind of warfare.

The issue of warfare against non-Muslims is a fairly complicated one in Islamic thought. The Qur'an legitimizes wars of self-defense waged against non-Muslims as an answer to "actively hostile unbelief". However, as Sachedina⁷ argues, later jurists regarded this notion as abrogated and that Muslims had a duty to fight even when non-Muslim hadn't initiated the hostilities. (Sachedina in Johnson (ed.) *et al.* 1990 p. 43). This idea has to be understood in light of the Qu'ranic emphasize on the responsibility of human beings of furthering the cause of God. As Martin says: "[w]ith Muhammad, the Seal of the Prophets, the Muslim *umma* [community-my remark] is divinely ordained to Islamize the whole of humankind." (Martin in Johnson (ed.) *et al.* 1991 p. 107). This cannot be done arbitrarily, however, as there is a heavy burden of proof on the Islamic authority who initiates this form of *jihad* to show that it follows the Qur'an principle of "enjoining the good and forbidding the evil" (Sachedina in Johnson (ed.) *et al.* 1990 p. 44).

Despite this, there are still differences between what can be called efforts to expand Muslim territory and defense from enemy attacks. In the first case, there is a state of *fard kifaya*, collective obligation, among able-bodied and debtless adult Muslim males to their part, which might or might not involve violence. In the second case where there is an attack on Muslim lands *fard kifaya* becomes *fard 'ayn*, individual obligation. In these situations, all must do what he can in the effort to stave off the intruders (Kelsay in Johnson (ed.) *et al.* 1990 p. 200).

The arguments above represent the ideas of Islamic jurists. The historical expansion of Islam might have been different. As Martin argues, conversions of non-Muslims might have primarily been the effect of persuasion by religious disputants sent out to the *dar al-harb*, and not forced conversions. (Martin in Johnson (ed.) *et al.* 1991 p. 110).

Let us now turn to modern concepts of *jihad*. We begin with Abu al-A'la Mawdudi. He concludes there are two forms of legitimate wars, defensive wars and what he calls "reformative" wars (Hashmi in Brockopp (ed.) 2003 p. 135-136). Mawdudi chooses to cast his first form of legitimate war in the modern language of human rights, and argue that self-defense is just "if anyone attempts

⁷ Sachedina base most of his arguments on a work called *Kitab ikhtilaf al-fuqaha'* ("Difference of opinion among the jurists") by the famous 10th century Islamic scholar *Muhammad b. Jarir al-Tabari*.

to seize your human rights, commit oppression, expel you from legitimately occupied land, deprive you of your faith and conscience, attempts to thwart you from religious life, [and] disrupts your social life with the aim of forcing you away from Islam". He further argues that if oppressed Muslims are unable to defend themselves it become obligatory, *fard 'ayn*, for other Muslims to come to their aid. The second legitimate form of war is a reformatory war aimed at "commanding the right" and "forbidding the wrong"⁸. "Commanding the right" to Mawdudi means to invite others to adopt Islam and cannot be pursued with force. "Forbidding the wrong" entails creating the overthrowing of oppressive regimes and the creation of a just social order, and the pursuit of that will often involve violence. (*ibid.*)

Hamidullah, by contrast, discusses four legitimate form of wars; defensive, sympathetic, punitive and idealistic wars. Sympathetic wars are waged to liberate Muslims from oppressors and punitive wars are waged against "rebels, brigands, and apostates". The fourth form, idealistic wars, is a form of expansionary *jihad* but one that can only be waged if all other forms of propagation have been closed by the foreign power. Idealistic wars should according to Hamidullah not be wars of forced conversion of non-Muslims, but rather the opening up of corrupt societies to Muslim preaching (Hashmi in Brockopp 2003 p. 136-137).

Al-Zuhayli's concepts of legitimate wars takes three forms; wars waged against those who prevents the preaching of Islam or against dissenters, wars waged in defense of oppressed communities or individuals, and defensive wars. (Hashmi in Brockopp 2003 p. 137).

An example of a modern scholar who rejects all form of aggression is the Iranian scholar Ayatollah Murtaza Mutahhari. As Lawrence says: "[a]ggression, for Mutahhari, is an absolute, unmitigated evil." (Lawrence in Johnson (ed.) *et al.* 1991 p. 154-155). Wars of defense are legitimate according to Mutahhari, as is wars fought to defend the "rights of humanity". As a matter of fact, anyone, Muslim or not, who support people fighting for those rights are engaging in the greatest *jihad* (*ibid.*).

What conclusions can we then draw from this comparison of just causes of war between modern Western sources and Islamic sources? Let us first compare the modern Islamic view with that of its early and medieval predecessors. The legitimacy of self-defense has remained largely intact. This is not surprising as it is a need that can be regarded as constant over time. The division between *dar al-islam* and *dar al-harb* seems to remain intact, implied by the scholars ideas about spreading Islam to non-Muslims, as has the acceptance of expansionary *jihad*, even though they are viewed as the opening up of societies to Islam and justice and not "common" military conquest. Perhaps the fact that two of the scholars are not in a position of political power, and one heads a party not in control of a nation might explain this more idealistic form of *jihad*.

This aside, the most striking feature of the modern views on *jihad* compared to the older ones is the attempts to integrate of Western ideas of human rights and humanitarian intervention into Islamic thinking. Mawdudi uses the term "human

rights” that are similar to what we can find in modern Western thought like the Declaration of Human Rights. Al-Zuhayli compares his wars in defense of the oppressed to modern views on humanitarian intervention, which could create a particularly Islamic justification into such endeavors by, say, a U.N. Mandated intervention force.

This leads us to the question of the similarities between Western Just War theory and *jihad*. Both traditions accept self-defense as a just cause for war. After this, however, the issue becomes more complex. The form of expansionary *jihad* promoted by modern Islamic scholars, for example reformatory or idealistic wars, would be difficult to combine with modern Western Just War theory and even more so intentional law. Chapter 2(4) of the U.N. Charter explicitly forbids the use of force, and even the threat of use, against the sovereignty of any state. The *jihad* would have to take the form of a humanitarian intervention, or something similar, to be regarded as just by Western standards but this is also something that could be possible judging from the arguments of the scholars above. If Muslims are oppressed, a humanitarian intervention could be the ”opening up” of that society necessary for Islamic preaching and the spread of Islam. I will note here, though, that there is a substantial debate among Islamic scholars whether *jihad* is restricted to self-defense or can be broader (Martin in Johnson (ed.) *et al.* 1991 p. 108). Mayer, quoting the Islamic scholars Sobhi Mahmassani and Sheikh Shaltut, argues that while their views on Islam are similar to what we can find in modern international law, their claim that a lack of religious freedom as a just cause of war is at odds with said international law. (Mayer in Johnson (ed.) *et al.* 1991 p. 203-205).

Another difference between Western and Muslim thoughts is how ”the other” is viewed. A dichotomy like the *dar al-islam* and *dar al-harb* one doesn't exist in modern Western Just War theory. This one, on the other hand, has an explicitly universalistic profile where all parties are expected to follow the same rules regardless of creed. Special treatments of people of your same religion under some circumstances is not accepted (i.e. *Akham al-Bughat*). This is exemplified by the first words in the Preamble of the U.N. Charter: ”We the people of the United Nations”, implying that the Charter is equally binding for all signatories.

Akham al-Bughat is interesting here for another reason. Muslim scholars didn't delve too deep into the *jus ad bellum* arguments and the legitimacy of the *baghi*'s rebellion. (El Fadl in Johnson (ed.) *et al.* 1990 p. 163-168). A *baghi* might very well be correct in his opinions. This implies a form of relativity in political truth where rebels are not unanimously viewed as criminals not worthy of any remorse. As El Fadl mentions, it was not until after the French Revolution when rebels in the West enjoyed the same amount of leniency (*ibid.*). Today, rebel groups are not automatically viewed as illegitimate and criminals, except by the target governments, unless *jus ad bellum* and *jus in bello* criteria deem them to be so. Instead, these might fall under the ”dissident armed forces or other organized armed groups” category on the Geneva Convention Protocol II, and have as such the rights given by the Geneva Convention. *Akham al-Bughat* was in this regard ahead of its time.

4.2 Competent authority

The issue of competent authority in Islam can be viewed along two axes; one between self-defense and expansionary *jihad*, and one between the different sects of Islam, i.e. Shia and Sunni in my study.

Defense against an outside attack doesn't require any specific authority to practice; it is an *fard 'ayn* situation where all Muslims have an individual obligation to aid in the struggle. In the case of the expansionary *jihad* the situation is different. For Shia Islam, this form of *jihad* required either the presence of the just *Imam* (the leader of the single Islamic state) or someone deputized by him in case of his absence. This requirement exists to prevent misuse of *jihad* by leaders who have other goals than God's in mind. Only the just *Imam*⁹ has an infallible interpretation of Islamic revelation and is the only one who can avoid errors in Judgment (Sachedina in Johnson (ed.) *et al.* 1990 p. 44-45). Lawrence goes further and states that a person of enough piety and scholarship in Islam can wage expansionary *jihad* if he has been commissioned by a Shi'i cleric. One doesn't have to wait for the return of the just/hidden *Imam* (Lawrence in Johnson (ed.) *et al.* 1991 p. 147). The Shia Islam requirement of a just *Imam* is a strong, albeit an idealistic, example of the just intention idea from the Western tradition. It shows well that concerns about the misuse of *jihad*, and by extension warfare in general, is very much alive in Islam.

In Sunni Islam the requirement of a just *Imam* is not necessary. Here, instead, the duty of expansionary *jihad* falls on the shoulder of the *caliph*, the leader of an Islamic empire. (Donner in Johnson (ed.) *et al.* 1991 p. 51). In practice, however, this devolved into a task granted to local governors as well (Trombley in Robinson (ed.) 2003 p. 154).

It is unclear if Mawdudi, Hamidullah or al-Zuhayli have changed the competent authority criteria compared to those of medieval scholars. While direct access to their work might shed more light on this, it is still reasonable to assume that their ideas parallel those of earlier scholars, considering that they still hold expansionary *jihad* as a just form of war under some circumstances. The Westphalian nation-state system was well-established when these three men wrote their works and they would most likely have accommodated this political reality.

Both Western Just War theory and *jihad* aimed at expanding Islamic rules have a competent authority criterion. In modern Western thought, this authority are the leaders of the nation-states that makes up the world order, as well as organized dissident groups capable of carrying out military operations and are in possession of a territory.

In Islamic thought, the competent authority is the *Imam* or *caliph*. Given the particular nature of the proposed Islamic state, these leaders are both political and religious leaders. Here we can see a difference between *Imams* and *caliphs* and their Western counterparts; modern Western leadership is explicitly secular.

⁹ Shia Muslims believe the twelfth *Imam*, Muhammad a-Mahdi, will return on the Day of Resurrection to lead mankind and establish Islam across the world.

Religious leaders in the West do not have the authority to wage a war. In my study I have not been able to ascertain if state leaders in modern Islamic nation-states have the authority to initiate a *jihad*. However, examples of *groups* invoking *jihad* exists. Lawrence (in Johnson (ed.) *et al.* 1991 p. 147-158) quote two interesting examples; an uprising against the French colonial power in Morocco 1912 led by a man named el Hiba; and Iran's call to *jihad* against Iraq in the Iran-Iraq war 1980-1988. Lawrence's assessments of these puts *jihad* in a fairly bleak position. He concludes that it is not possible to overthrow a modern nation-state by means of *jihad*. He further concludes that within a modern Sunni Muslim context, the term *jihad* becomes nothing more than a "pejorative code word for random protests against excesses committed by the regime in power." (*ibid.*). The example with Iran where an Islamic state claimed to wage *jihad* against the secular Iraq looks initially better, but in the end Iran failed to achieve its objective in defeating Saddam Hussein.

4.3 Proportionality before war

The issue of proportionality before war does not seem to have been a major issue for Islamic scholars. The evil that the necessary evil of war is intended to counter is a difficult matter in Islam. On one hand, for the Qur'an and the Prophet, unbelief was not only a religious wrong punishable at the day of judgment, but also a moral wrong punishable here and now (Sachedina in Johnson (ed.) *et al.* 1990 p. 42). A wrong like this would be difficult to measure from any objective standard.

On the other hand, Muslim jurist have proposed a sort of balancing test where the possible evils of war are weighted against the possible good (El Fadl in Brockopp (ed.) 2003 p.110). A principle like this could balance up the notion that unbelief should be punished by worldly powers.

Given the reorientation from *jus in bello* to *jus ad bellum* issues in modern Islamic thought on *jihad*, it is possible that more attention have been given to the proportionality criteria. My own material, though, is too limited in this regard to make any definite statements about this issue. A few conclusions, with reservations, can still be drawn. Mawdudi's "forbidding the wrong" is the resisting or overthrowing of corrupt and oppressive governments. This could fall within the confines of humanitarian interventions, something that some people find to be a just cause for war. The good that comes out of this could balance up the evil that this Endeavour might entail. If one takes the position that self-defense is the only just cause for *jihad* as some modern Islamic scholars do, then warfare could not be waged against other states on religious grounds unless they attack first. Those resisting or forbidding the practicing of Islam would not be an evil that would warrant war.

4.4 Last resort

In situations where there is an impending risk of conflict between Muslims and non-Muslims, Islam has a well-established and formal variety of the criteria of last resort called *da'wa* ("invitation"). First, the non-Muslims are given the opportunity to convert to Islam and then be left in peace. If they refuse this, they should be given the offer of accepting Islamic supremacy and sovereignty, and become *dhimmi*. These *dhimmi* lives under the auspice of an Islamic authority but have to pay a tribute called *jizya*. Only when the non-Muslims have rejected both of these offers are the Muslims justified to attack. The offer of *da'wa* does not have to be offered to non-Muslims invading Muslim lands. (El Fadl in Brockopp (ed.) 2003 p. 114; Martin in Johnson (ed.) 1991 p. 99).

Modern Islamic scholars seem to keep the principle of last resort, albeit not necessarily in the form of *da'wa*. Hamidullah, for example, claims that his idealistic *jihad* can only be waged if all other peaceful means have been depleted by the foreign power (Hashmi in Brockopp (ed.) 2003 p. 137).

It is clear that the principle of last resort is important in both Western and Islamic traditions, perhaps even more so in the Islamic one where a formal procedure have emerged. But here the similarities stops; if *da'wa* were to be used prior to a potential aggressive war, it would conflict with Article 2(4) of the U.N. Charter which forbids the threat of force. Depending on how modern scholars interpret this, they may or may not have a problem with this.

4.5 Discrimination

As mentioned before, early and medieval Islamic jurists spent a great deal in establishing rules of discrimination between combatants and noncombatants when war was a fact. Just like in the case of just cause, there is a difference in early or Medieval Islamic jurisprudence in the treatment of non-Muslims and criminals, and *baghi*.

I will start with the treatment of non-Muslims. The 8th century jurist Muhammad ibn al-Hasan al-Shaybani (d. 804-5) argues that all males of the enemies who have reached puberty may be killed. Children may not be killed at all, but should instead be taken as property along with women. Other jurists argued that Muslims are not responsible for the death of any enemy civilian. (Kelsay in Johnson (ed.) *et al.* 1990 p. 198-204).

Another jurist, Ibn Taymiyya (d. 1327-8) takes a different approach. According to him, only those who obstruct the cause of God may be killed. Taymiyya states: "[W]omen, children, the hermit, the elderly, the blind, the crippled or anyone of similar status [...] may not be killed unless they fight [Muslims] by word or act." (quoted by El Fadl in Brockopp (ed.) 2003 p. 115).

In the case of *Akhim al-Bughat* where Muslim fights Muslim over doctrinal differences the situation is different. The general outline is this: fugitive and wounded may not be killed, prisoners may neither be executed nor enslaved, and enslaved male Muslims have to be released once the war is over. Women and children may not be intentionally killed or imprisoned. Property of Muslims may not be seized, and that which is have to be returned once the fighting is over (El Fadl in Brockopp (ed.) 2003 p. 108). Al-Shaybani, on the other hand, says that prisoners and wounded *can* be killed, and fugitives hunted down if a group of rebels still lives and can offer refuge to other rebels ((Kelsay in Johnson (ed.) *et al.* 1990 p. 206).

Let us now look at some modern views. According to Mawdudi, force may only be used against "those who are engaged in fighting or at the most those who are connected to the offense." (Mawdudi quoted by Hashmi in Brockopp (ed.) 2003 p. 139). However, Mawdudi, while separating between combatants and noncombatants argue that combatants are those that take active part in fighting or anyone who have the mental or physical capacity to take part. This together would mean that, to Mawdudi, combatants are all male adults. Noncombatants are women, children, the sick or wounded, the elderly, the blind, the insane, hermits, travelers, and religious functionaries.

In Hamidullah view, noncombatants are Mawdudis list above, as well as traders and merchants, peasants, contractors, and anyone not fighting or are indifferent to the war. (*ibid.*)

For al-Zuhayli, combatants are "those who prepare themselves for battle directly or indirectly, such as soldiers – either conscripts or volunteer – whether on land, sea, or the air." To this list, he adds military and state leaders, and even military medical and postal staff. (*ibid.*)

Mutahhari mirrors al-Zuhaylis views on soldiers and states that the valid targets for military actions are those that fight the Muslims, i.e. enemy soldiers. Women, children and the elderly are to be spared. Further, Mutahhari says that the economic resources of the enemies should not be destroyed (Lawrence in Johnson (ed.) *et al.* 1991 p. 153).

It is in the area of noncombatant discrimination where we can find the greatest convergence between modern Western and Islamic views. All of the modern scholars, except Mawdudi, have views regarding noncombatants that are largely in line with what we can see in the Western thought as described by Lackey in the Western Just War section. To quote the earlier part "[t]he modern consensus on what constitutes military targets is 'servicemen, weapons, and supplies; the ships and vehicles that transport them; and factories and workers that produce them.' [...] Everything else is civilian and noncombatant."

This modern Western view differs substantially from earlier Islamic sources, except in the case of *Akhim al-Bughat*. Here we see rules that are starting to look like the modern Western view, although they only apply in very specific situations. Women and children, who would probably be noncombatants in a modern context, for example, may not be intentionally killed or imprisoned. We have reason to come back to *Akhim al-Bughat* later.

4.6 Proportionality in war

We have now reached the question on proportionality in war. In this section it is best to start with *Akham al-Bughat*. The weapons of mass destruction of the day, like mangonels (a type of catapult), flame-throwers or flooding are not allowed unless absolutely necessary according to some schools. Other schools allowed them unless their use would lead to the death of women and children (El Fadl in Johnson (ed.) *et al.* 1990 p. 161-162). In regards to property, the medieval Islamic jurists argued that there need to be a defensible reason or cause behind any destruction that intentionally takes place (El Fadl in Brockopp (ed.) 2003 p. 116-119).

In wars against non-Muslims we see a similar approach to weapons of mass destruction as in *Akham al-Bughat*: fire, flooding and mangonels are not allowed according to some jurists. (*ibid.*). Al-Zuhayli, the only modern scholar in my study who addresses proportionality in war to any greater extent, divided the medieval thought on the issue into two camps; those that allowed any means to be used to break enemy strength if the necessity were there, and those that were more restrictive in this regard. Some schools in the first group allowed the poisoning of drinking water, and flooding or firing of enemy fortresses. Other schools of the second group did allow firing if they were subject to it first, while forbidding flooding and poisoning (Hashmi in Brockopp (ed.) 2003 p. 140).

In a more modern context, al-Zuhayli argues that some weapons or tactics that may result in civilian death may be acceptable based on military necessity. The only exception to this is the use of poisons which he thinks are prohibited. Despite this, al-Zuhayli is open to the development of modern weapons of mass destruction as a deterrent. However, they may not be used unless the enemy deploys them first. The explanation for this restriction is that they cause the death and destruction of those whom may not be killed, like women (Hashmi in Brockopp (ed.) 2003 p. 141-142).

Sobhi Mahmassani presents a more general view here when he says "[a]cts of cruelty and unnecessary destruction and suffering are expressly proscribed." (Mahmassani quote by Mayer in Johnson (ed.) *et al.* 1991 p. 203).

As we can see, the question of *jus in bello* proportionality and the use of destructive weapons and tactics have been a major issue in Islamic thought for a long time. Both medieval and modern ideas on the issue share some of the same limitations as within modern Western thought. The focus on both contemporary traditions is the avoidance of unnecessary destruction. By looking at the Islamic concept of necessity, *darura*, we can also draw parallels with Walzers *supreme emergency*. The five words "necessity makes permissible the prohibited" (Hashmi in Brockopp (ed.) 2003 p. 146) sums up both ideas neatly.

5 Conclusions

This study has had the aim of comparing modern Islamic just war concepts with its Western counterparts for the purpose of finding basic similarities. I have based this purpose on the hypothesis that some concerns in war, like the justifications for them and the discrimination between valid and invalid military targets, are so common that they crosses cultures. The results I have gotten are ambiguous. Let me go through them one at a time.

While several of the modern Islamic scholar have adopted the language of human rights and humanitarian intervention, the implied dichotomy between *dar al-islam* and *dar al-harb*, accentuated by the acceptance of "reformative" or "idealistic" wars, marks a major difference between the Islamic and the Western concepts. The Western one is explicit in its universalism as shown by the Preamble of the U.N. Charter. I will note, however, that not everybody accepts Western universalism, and Islam presents a form of universalism of its own, at least within the confines of Islam. Further, forced democratization that some promotes can also be seen as a form of offensive war against the "unbelievers". In the end, there has been a certain move towards the modern Western view by Islamic scholars in regards to the just causes for war. They have certainly tried to describe their views based in Islamic thought with "Western" terms. Al-Zuhaylis defense of humanitarian intervention from a Muslim perspective is a case in point here.

It is clear that a competent authority is an important part of both Western and Islamic concept of the just war. Not anyone can legally start a war. The modern Western view is that only governments, the U.N. Security Council and some armed groups can be seen as competent authorities. The concept has a particular secular dimension. In the West there has long been a division between the worldly and divine powers, and in the modern world the worldly have taken over most political power. The situation have been completely different in the Islamic world where the worldly and divine powers often have been one and the same, as is the case with the *Imam* or the *caliph*. However, there are no more caliphates and all Muslim states today are modern nation-states. Islamic jurists and scholars of today have most likely taken this into account when interpreting the Qur'an and older Islamic source. My material was limited here to second-hand sources so I have not been able to draw any definite conclusions here. A direct access to the sources in question, or similar like them, might shed some light on this issue.

The result from the comparison of the proportionality before war has been largely unsatisfying. The issue does not seem to have been of any great importance to early or medieval Islamic jurists. There is the principle of balancing the evil of a waged war against the possible good outcome, but not much more. Again, here we might have a case where my material is simply too limited.

The comparison on the last resort issue yielded better results. In *da'wa*, Islam has a formal and well-established procedure to go through before initiating a war. The Western tradition lacks such a procedure and only has the general recommendation. Another major difference is that if we were to apply *da'wa* as it was understood by medieval scholars and jurists, and uses it before a potential aggressive war, we would break Article 2(4) of the U.N. Charter forbidding the threat of force. It is not clear to what extent the modern scholars in my study holds this procedure of *da'wa* as truth and something to be followed.

The two *jus in bello* criteria have provided me with the most satisfying results in the study. This is not surprising considering the amount of attention it has traditionally gotten on Islamic thought, and the amount of attention it has gotten in modern Western thought. Both traditions have spent a great deal trying to spell out who can be attacked and who cannot (i.e. discrimination). It is also here that we find the greatest convergence between the modern Western and Islamic traditions. We can also see a marked difference between common Islamic opinions here and those of today's scholars. Overall, early Sunni jurists have solved the issue of the distinction between combatants and noncombatants by viewing the religious and political matters involved. All enemy people who belong to a group of people that are in opposition to Islamic rule are liable to damage; how much depends on if they are an adult male, or a woman or a child. In the West we have chosen different path where we separates between combatants and noncombatants based on their role in society or in the specific conflict. Modern Muslim scholars seem to have opted for a similar approach.

Finally, the question of proportionality in war has raised the question of the use of destructive weapons and tactics. It has been shown that this is an issue for both the Westerner and the Muslim. Medieval Islamic jurists have been divided on what should be allowed and what should not. However, the prevalent modern view seems to be that destructive weapons should not be used, or only in extreme situations. These extreme situations, figured in Islamic jurisprudence as *darura* ("necessity") resembles Walzer *extreme emergency* and seem to work in a similar manner. An extreme emergency, or *darura*, might warrant some action not otherwise permitted.

The concept of *Akham al-Bughat* is a special case in my study and deserves as separate section. In here, we can see some strict codes of conduct for this specific type of warfare. Just like in the modern West, rebels here are not seen as unanimously evil or criminal. Further, the *jus in bello* criteria are stricter than in other form of medieval *jihad* and more in line with what a modern Westerner would accept. Despite its limitation to very specific situations, Islam was ahead of its time with *Akham al-Bughat*.

My hypothesis was that we could find basic similarities between the modern Western and Islamic concepts of just war. Has the hypothesis been supported? In the case of *jus in bello* I would say yes. The similarities are of such a nature that we can talk about basic similarities. In the *jus ad bellum* part the result is more ambiguous. Concerns about just cause and intention, competent authority, proportionality and last resort exist in both traditions, but there are major differences as to what exactly these should contain.

6 Appendix

Selected Articles from the U.N. Charter

Preamble

We the Peoples of the United Nations Determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

And for these Ends

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

Have Resolved to Combine our Efforts to Accomplish these Aims

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Article 1

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

Article 2

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

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