

## **ISLAM**

### *The sources of Islam: the Qur'an and the Sunna*

87. There are two primary sources from which all Islamic belief and practice is derived: the *al-Qur'an* (the Revelation, or literally 'recitation', from God) and the *Sunna* (the normative behaviour and practice of the Prophet Muhammad). The legal injunctions derived from the combination of the *Qur'an* and the *Sunna* are called the *Shar'ia* (legal path) of Islam.
88. As M.A.S. Abdel Haleem points out in his translation of the *Qur'an*<sup>2</sup>, an important stylistic feature of the *Qur'an* is that it alludes to events shorn of their historical background. Those who heard the *Qur'an* at the time of its revelation were, of course, fully aware of the contemporaneous circumstances, in particular, the physical persecution (*fitna*) of Muhammad and his followers by the polytheist and pagan tribes in Arabia and the necessity for the Muslims physically to defend themselves. Later generations had to rely on the Commentaries (*asbah al-nuzul*) to explain the historical context. It is obviously important that modern generations do likewise and that the *Qur'an* is read with a full understanding of the relevant historical context.

### *Life of the Prophet Muhammad (570-633 CE)*<sup>3</sup>

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<sup>2</sup> OUP 2004, at xxii-xxiii

<sup>3</sup> See the useful introduction to M.A.S. Abdel Haleem's translation of the *Qur'an* (OUP 2004).

89. The Prophet Muhammad was born in Mecca about the year 570 CE. Polytheism was the predominant religion in Arabia at the time, although pockets of Christianity and Judaism were to be found in places such as Yemen, Yathrib and amongst the Arab tribes of the North under Byzantium rule. There was no central government. Desert conditions were harsh. There was competition for scarce resources and frequent fighting between tribes.
90. The first revelation of the *Qur'an* to Muhammad is recorded as 610 CE at the Cave of *Hira* outside Mecca. Muhammad's teachings and his message of 'one God', together with his growing political power, was resented by many of the polytheist and pagan tribes who visited Mecca on pilgrimage. By 615 CE, persecution led Muhammad to send 100 of his followers to seek refuge with the Christian King of Abyssinia (Ethiopia), King Negus. In 622 CE Muhammad and his followers eventually fled from Mecca to Yathrib, 200 miles to the north. This became known as the first *Hijra* (migration or journey).
91. Muhammad's fame and teachings and Islam quickly spread. Yathrib became known as Madina or Medina (the City of the Prophet or City). However, during the Median period of Muhammad's life (622-633 CE), Muhammad and his followers and their non-Muslim allies (*ummah*) continued to be threatened with annihilation by Meccan polytheists and pagan Qurishi opponents. A number of battles took place between Muhammad and the Meccans near Medina, including the Battles of Badr (624 CE), Uhud (625 CE) and Trench (627 CE). It was in this context that in 623 CE the first *Qur'anic* revelation was recorded reassuring everyone, including Muslims, that if they were attacked they were entitled to defend themselves:
- “Those who have been attacked are permitted to take up arms because they have been wronged – God has the power to help them – those who have been driven unjustly from their homes only for saying ‘Our Lord is God’. If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God's name is much invoked, would have been destroyed.”* (Qur'an 22.39-40)
92. Muhammad and his followers survived the threat of annihilation. His teachings and influence continued to spread, until even the Meccans themselves eventually accepted Islam. Muhammad made his last pilgrimage to Mecca in 632 CE, by which time the whole of the Arabian peninsula had accepted Islam and united under one state and leader.
93. Muhammad died in 633 CE. His role as leader of the Islamic state was assumed by Abu Bakr (632-634 CE), followed by 'Umar (634-644 CE), then Uthman (644-656 CE) and then Ali ibn Abi Talib (656-661 CE). These four leaders became known as the Rightly Guided Caliphs. The schism between *Sunni* and *Shi'a* Islam exists because *Sunni* Muslims believe Abu Bakr was the first Caliph and true inheritor of Muhammad's legacy, whereas *Shi'a* Muslims believe his son-in-law, Ali ibn Abi Talib, was the first Caliph and true inheritor of Muhammad's legacy.

*Islam is a religion of peace*

94. It is common ground that Islam is a religion of peace. The *Qur'an* is a book of peace.

95. The words *Islam*, *Muslim* and *Salaam* all share the same Arabic triconsonantal root, *s-l-m*, which denotes “peace”. *Islam* means ‘submission to the will of God/Allah’, *i.e.* at peace with God. *Muslim* means a person who has submitted to God/Allah, *i.e.* at peace with God. *Salaam* is the Arabic word for peace.
96. The fundamental philosophy and world-view of Islam is ‘unity-in-diversity’. God is one God who created Heaven and Earth and the entire universe, including every human being. God, as the Source and Creator of life on Earth, is the unifying feature that underlies the whole of existence and binds humankind. Adam and Eve are cited by the *Qur’an* as the father and mother of the whole of humanity. Noah, Moses, Abraham, Jesus and Muhammad are referred to and cited as Prophets chosen by God. A large part of the *Qur’an* is directed at humankind in general, without any distinction being made between believer or non-believer. We are all brothers and sisters and creatures of God by dint of being from the tribe of Adam (*Banu*). Within this essential unity, the *Qur’an* recognises natural diversity and plurality:

*“O mankind! Lo! We have created you male and female, and have made you nations and tribes that you may know one another. The noblest of you, in the sight of Allah, is the best in conduct. Allah is Knower, Aware.” (Qur’an, 49:13)*

97. Islam includes unconditional respect for humanity regardless of faith, since all human beings are God's creatures:

*“[L]et him who believes in Allah and the Last Day be generous to his neighbour, and let him who believes in Allah and the Last Day be generous to his guest” (narrated by the Companion, Abu Hurairah).*

#### *Extremism in religion is forbidden in Islam*

98. *Islam* forbids anything extreme. This includes extremism in religion. The *Qur’an* commands:

*“Oh People of the Book, do not go to excess in your religion.” (Qur’an, 4: 171 and 5: 77).*

99. Prophet Muhammad said:

*“Distance yourselves from being extreme in religion” and, “Beware of going to extremes in religion, for those before you were only destroyed through excessiveness”.*<sup>4</sup>

100. The great 14<sup>th</sup> Century Damascene scholar, ibn Taymiyya, said that extremism in religion means deviating from a ‘Middle Path’ between two extremities.

#### *The meaning of “Jihad”*

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<sup>4</sup> Narrated by Ahmad, Ibn Khuzaimah, An-Nasa`ii, Ibn Majah and Al-Hakim.

101. The word *iihad* or *jihād* ( جهاد ) is an Arabic participle which means literally “struggling”, “exerting oneself” or “striving”. It is the nominal participle from the triconsonantal Arabic root *j-h-d*. In modern parlance, the word *jihad* has, unfortunately, become synonymous with ‘holy war’; but *jihad* has more complex, varied and subtle meanings in classical Islam which must be viewed and understood in their proper historical context.
102. Scholars distinguish between the linguistic (*lughawi*) and religious meaning of *jihad*. The religious use of the term *jihad* in Islam is shorthand for *jihad fiy sabilillah* which means “striving in the cause (literally, path) of God” (in *Qur’anic* and contemporary usage).
103. There was broad agreement between the experts as regards the origin, tradition and meaning of *jihad* in Islam. *Jihad* is an ancient, multi-faceted tradition of ‘striving or struggling’ in the cause of God, to obey God and His Law and to establish and preserve Islam. It was common ground that the prevalent message of the *Qur’an* is one of peace and tolerance, but it allows reasonable self-defence (like the Common Law).
104. The word *jihad* appears in 41 verses in the *Qur’an* (in 11 Meccan verses and 30 Median verses). None refer explicitly to an armed struggle. There are 21 references in the context of ‘striving’ generally because of religious beliefs and 12 references in the context of ‘armed combat’ in defence of Islam (*qital*). It is significant that all the verses of the *Qur’an* which refer to the conduct of armed combat (*qital*) came after the Prophet Muhammad and his Companions fled from persecution from Mecca to Medina (*hijra*) in 622 CE as explained above.

#### *Categorisation of Jihad in Islam*

105. Classical categorisation of *jihad* in Islam by jurists such as the Maliki<sup>5</sup> jurist, Ibn Rushd (Averroes), involved four main categories: (i) *jihad* of the heart (*jihad bil qalb/nafs*) concerned with combating the evil insinuations of the ego and the devil; (ii) *jihad* by the tongue (*jihad bil lisan*) is concerned with speaking the truth and spreading the word of Islam; (iii) *jihad* by the hand (*jihad bil yad*) concerned with doing what is right and combating injustice; (iv) *jihad* by the sword (*jihad bis saif*) which refers to armed combat (*qital*) in the way of God, or holy war (*qital fi sabilillah*), the final resort if other types of *jihad* fail and the integrity of the Islamic religion and safety of the Muslim community is threatened.
106. The first category, *jihad* of the heart (*jihad bil qalb/nafs*), is classically referred to as the ‘Greater Struggle’ (*al-jihad al-akbar*) as it concerns the daily business of training the ego to obey God’s injunctions. The fourth category, *jihad* by the sword (*jihad bis saif*) is commonly referred to as the ‘Lesser Struggle’ (*jihad al-asghar*).

#### *Qital*

107. The *Qur’anic* word for armed defensive combat is in fact “*qital*” not *jihad*. It was only during the later formalisation of the doctrines of Islam and the doctrinal formulations of *jihad* as ‘striving in the path of God’ that *qital* was included officially

<sup>5</sup> A *Sunni* religious school (*fiqh*) founded by the 8<sup>th</sup> Century jurist, Malik ibn Anas

as one of the many forms of *jihad fiy sabilillah* (striving in the path of God). Regrettably, the wider concept of *jihad* has now become confused with the narrow concept of *qital* (a concept which is highly regulated by Islamic law - see further below). In modern times, *qital* has come to monopolise the popular meaning of the word *jihad* both in the Muslim-majority world and in Western minds. This means, unfortunately, that whenever most people use the word *jihad*, they are almost always referring (incorrectly) to *qital*, *i.e.* armed combat.

108. The *Qur'an* and the *Sunna* lay down strict codes for the ethics of both declaring and conducting *qital* (*la ta 'tadu*):

(1) The established Islamic doctrinal conditions laid down by the *Qur'an* and the *Sunna* for the declaration of armed combat (*qital*) include, *e.g.*, (i) exhaustion of all peaceful avenues, (ii) self-defence against a known armed aggressor (which could never include civilian populations), and (iii) declaration of war by the recognised 'leader' of a Muslim political entity.

(2) The stipulations in the *Qur'an* and the *Sunna* for the ethics of conducting *qital* include, *e.g.*, (i) proportionate force, (ii) only combatants may be fought, not civilians, (iii) crops and civic infrastructure may not be damaged, (iv) looting, plunder and property violation is prohibited, (v) the use of human shields is forbidden, and (vi) prisoners of war must be humanely treated (see in particular *Qur'an*, 2:190-194).

109. The general and historical context of *Qur'an* 2:190-194 was a concern raised by Muhammad's followers as to whether they were permitted to retaliate and defend themselves when attacked by their persecutors within the sacred precincts in Mecca when on pilgrimage.<sup>6</sup> The *Qur'an* provides:

*"Fight in God's cause against them that fight you but do not overstep the limits. God does not love those that overstep the limits."* (*Qur'an*, 2:190-191)

110. Propagation of the false notion that *jihad* in effect means naked *qital*, shorn of its proper historical context and limitations, has been used by extremists to radicalise elements in contemporary society. This distorted notion of *jihad* continues to be used, illegitimately, as a powerful tool of violent Islamist radicalisation, especially in respect of young Muslim men, for whom fighting a 'war' 'in the cause of God' has a natural historical and emotional appeal.

111. Islamist extremists have routinely diluted, or entirely ignored, these conditions and regulations for (*qital*) in order to seek to justify terrorist attacks against defenceless civilians (notably "9/11" and "7/7").

*Is qital only defensive?*

112. The experts disagreed on the nature of armed *jihad* (*qital*) in Islam. Professor Gleave stated that the majority of *Sunni* and *Shia'* jurists were of the view that the *Qur'an* licences both legitimate offensive and defensive *jihads*. Dr Wilkinson stated that the

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<sup>6</sup> See *Qur'an* 2:196 and M.A.S. Abdel Haleem, p.21, footnote (d).

*Qur'anic* warrant for armed *jihad* is always as armed *defence* of Islam and Muslim life from prior aggression and that this is the overwhelmingly majority scholarly view in both *Sunni* and *Shia'* Islam. They agreed that what constitutes 'defence' and 'offence' in the context of armed *jihad* is sometimes contested in Muslim circles.

113. It is not necessary finally to determine this theological issue for the purposes of this judgment, but in so far as it is relevant to do so, it is clear in my view, that the *Qur'an* permits only defensive *jihad* (*al-jihad a-difa'i*).

#### *Salafism*

114. *Salafism* is the movement within Islam which argues that Muslim practice should return to that of the 7<sup>th</sup> Century, the time of Islam's earliest 'pious ancestors' (*salaf salih*). *Salafism* in Islam, therefore, generally refers to Islam as practised by the earliest Muslim communities. *Salafi* Islam, is sub-divided into myriad sub-groups. There is a wide spectrum of *Salafist* views. In practice, *Salafism* often tends to scriptural literalism shorn of the necessary contextual reasoning (*asbab an-nuzul*). As Dr Wilkinson explains, *Salafists* are inclined to ignore the contextual understandings of Islam as developed by the four Canonical Schools of Islamic Law and sometimes 'cherry-pick' verses of the *Qur'an* and sayings of the Prophet Muhammad to form religious-legal judgments without the necessary contextual reasoning (*asbab an-nuzul*). Most extreme and violent Islamist extremists would claim to be *Salafi* Muslims, but they take this process of scriptural literalism and contextual ignorance to an extreme extent, *i.e.* scriptural determinism
115. Professor Gleave accepts that the majority of *Salafis* do not call for military offensive *jihad*, but simply call for devout Muslims to spread the message of Islam through a process called *da'wah* (call), that is, presenting to non-Muslims and calling on them to recognise the truth of Islam. *Jihadi Salafism* is an 'offshoot' of mainstream *Salafism* which 'supplements' the religious obligation of *da'wah* (call) with military action, which they refer to simply as "*jihad*".

#### *What is extreme Islam?*

116. I turn to consider what is properly to be considered "*extreme*" in the context of Islam and Islamic doctrinal positions. It is necessary to do so in order to determine that the BBC's plea of justification for the WCO is made out, *viz.* "*The Claimant is an extremist Islamic speaker who espouses extremist Islamic positions*". The various speeches and posts relied upon by the BBC were given by the Claimant on Islamic issues in his capacity as an Imam and directed to predominantly Muslim audiences. The analysis of what is "*extreme*" and what are "*extremist Islamic positions*" is, therefore, necessarily to be judged initially through the prism of Islam.
117. What is 'extreme' is, by definition, something which is not 'moderate'. Thus, "*extremist*" Islamic positions can be seen in contra-distinction to 'moderate' or 'mainstream' Islamic positions. Dr Wilkinson usefully defines moderate Islam as essentially those ideas, doctrines and worldviews consensually agreed by *Sunni* and *Shia'* Islamic Law Muslim scholars, mainstream *Salafi* scholars and Muslims, generally to constitute the essential doctrines, teachings and spirit of Islam, according to *Qur'an* and *Sunna*, applied in such a way as to be suitable for the context of contemporary Britain. I agree with this as a general working definition.

*Extremist Islamic positions*

118. In my view, the following constitute “*extremist*” Islamic positions (or *indicia* thereof).
119. First, a ‘Manichean’<sup>7</sup> view of the world. A total, eternal ‘Manichean’ worldview is a central tenet of violent Islamic extremism. It divides the world strictly into ‘Us’ versus ‘Them’: those who are blessed or saved (*i.e.* the “*right kind*” of Muslim) on the one hand and those who are to be damned for eternity (*i.e.* the “*wrong kind*” of Muslim and everyone else) on the other. For violent Islamic extremists, the “*wrong kind*” of Muslim includes moderate *Sunni* Muslims, all *Shia* Muslims, and many others who are “*mete for the sword*” and can be killed, and anyone who associates or “*collaborates*” with them. Violent Islamic extremists divide the world strictly into the Abode of Islam (*Dar al-Islam*), the Abode of Unbelief (*Dar al-Kufr*) and the Abode of War (*Dar al-Harb*). The ultimate agenda of violent Islamic extremists is the overthrow of all democratic states, including Muslim democratic states, and the creation of a global *Caliphate* or Islamic State and the imposition of a primitive, literalist interpretation of *Sharia* Law by force (as exemplified by *e.g.* ‘ISIS’). The clearest exposition of this ‘Manichean’ philosophy is to be found in Sayyid Qutb’s “*Milestones*” who called for a war against *jahiliyyah* (unbelief) (see further below).
120. Second, the reduction of *jihad* (striving in God’s cause) to *qital* (armed combat) (‘the Lesser Jihad’). An interpretation of *jihad* that simply equiperates *jihad* with *qital* and ignores the numerous peaceable meanings of *jihad* (and ‘the Greater Jihad’) would *a priori* be extreme. Such an interpretation would give *jihad* an exclusively violent meaning which it does not have.
121. Third, the ignoring or flouting of the conditions for the declaration of armed *jihad* (*qital*), *i.e.* the established Islamic doctrinal conditions for the declaration of armed combat (*qital*) set out above. Thus, terrorist insurgency, ‘leaderless’ *jihadist* attacks by groups or individuals against civilians, or the waging of aggressive war against another country or people, cannot properly constitute lawful *qital* under Islamic doctrine. Accordingly, encouragement of such actions would, therefore, be classified as “*extremist*” Islamic positions.
122. Fourth, the ignoring or flouting of the strict regulations governing the conduct of armed *jihad*, *i.e.* the stipulations in the *Qur’an* and the *Sunna* for the ethics of conducting *qital* set out above. Thus, the use of excessive violence, attacks on civilians, indiscriminate ‘suicide’ violence and the torture or the murder of prisoners would constitute violation of these regulations of *jihad*, and, therefore, be classified as “*extremist*” Islamic positions.
123. Fifth, advocating armed fighting in defence of Islam (*qital*) as a universal *individual* religious obligation (*fard al ‘ayn*). *Qital* has been adjudicated from early to classical

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<sup>7</sup> ‘Manicheanism’ was a Persian Gnostic tradition that became popular in the 3<sup>rd</sup> Century CE. It viewed the universe as the product of the eternal cosmic struggle between Light and Darkness and Good and Evil. It was named after its founder, Manes. Manicheanism was regarded by early Christians as heretical as it appeared to attribute creative powers to Darkness and Evil rather than exclusively to God. (*c.f.* Dr Wilkinson, para. 5.1.5)

to modern times by the vast majority of Islamic scholars as being a *collective* religious obligation (*fard al-kifaya*) unless one is directly under attack. Thus, encouraging young Muslim men or women to believe that it was their individual religious duty to go off and ‘fight in the name of Allah’ would be an “*extremist*” Islamic position.

124. Sixth, any interpretation of *Shari’a* (*i.e.* religious law laid down by the *Qur’an* and the *Sunna*) that required breaking the ‘law of the land’. Under *Shari’a*, Muslims are required to obey the law of the land, unless that law of the land explicitly required them to break the *Shari’a*.
125. Seventh, the classification of all non-Muslims as unbelievers (*kuffar*). Extremist Islamists cite irreconcilable differences between belief (*iman*) and unbelief (*kufr*) and classify as all non-Muslims as unbelievers (*kuffar*). In mainstream Islam, however, ‘People of the Book’, *i.e.* Christians and Jews, are not classed as *kuffar*.
126. Eighth, the extreme *Salafist* Islamism doctrine that the precepts of the Muslim faith negate and supersede all other natural ties, such as those of family, kinship and nation. This is redolent of the extreme *Salafist* Islamist outlook which cites absolute, irreconcilable differences between belief (*iman*) and unbelief (*kufr*) (see Sayyid Qutb below).
127. Ninth, the citing with approval the *fatwa* (legal opinions) of Islamic scholars who espouse extremist view (*e.g.* the *Salafi-Wahabi* scholar, Sheikh Abdul Aziz bin Baz), or referring with approbation to notorious violent, extremist, Islamic ideologues (*e.g.* Sayyid Qutb and Abdullah Azzam).
128. Tenth, any teaching which, expressly or implicitly, encourages Muslims to engage in, or support, terrorism or violence in the name of Allah.

#### *Islam forbids terrorism*

129. Islam forbids terrorism. Islamic notions of terrorism (*hiraba*) bear similarities to the UK statutory definition as regards unauthorised threats to the wellbeing and property of individual citizens and to the State. The *Qur’an* and the *Sunna*, *i.e.* the primary sources of Islamic Law, provide that the crime of sowing sedition and perpetrating terror, to “*cause corruption in the land*” in peaceful territories is one of the most severe crimes in Islam (*Qur’an*, 5:33). “*Corruption*” is defined as armed rebellion against a legitimate ruler, “*those who take up weapons to spread fear*”, highway robbery, kidnapping and other acts that would today be classed as terrorist activity. Muslims suffered terrorism in the first century of Islam at the hands of the Khwarij sect.<sup>8</sup>
130. Terrorism in Islam (*hiraba* or *irhab*) was defined by the 11<sup>th</sup> Century Chief Judge of Muslim Lisbon, Ibn ‘Abd al-Barr, as follows:

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<sup>8</sup> *Khwarij* means, literally, ‘*those who left the mainstream body of Islam*’. The Khwarij were a violent sect who opposed the political leadership of the Caliph ‘Ali through violent insurrection in the first century of Islam. They claimed that no human leadership had the political right to lead Islam which belonged to God alone. (*c.f.* Dr Wilkinson, para. 10.2).

*“Anyone who disturbs the free passage in the streets and renders them unsafe to travel, striving to spread corruption in the land by killing people or violating what God has made it unlawful to violate, is guilty of terrorism [hiraba], be he a Muslim or a non-Muslim, free or slave, and whether he actually realises his goal of taking money and killing or not.”*

131. Thus, the “9/11” and “7/7” bombers would have been guilty of terrorism (*hiraba*) under Islamic law.