

Chapter 7

Social Inclusion in the Context of Foreign-Policy Debates: Reflections on Jihad, Human Rights and Gender Equality in Islam

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Abstract This chapter will first discuss the inconsistency between Western policy on the issue of Palestine, as typified by Australian foreign policy, not only with the sentiments of increasingly large portions of these societies, but also the inconsistency between such policy formation and current research and trends within the field of conflict resolution. The second part of chapter will explore how the gap between these policy settings and Islamist policy positions in Palestine might be bridged by a shift in strategy among the Islamists themselves. I will present a new methodology based on social science research, contextualisation and a *maqasid* or objective-oriented approach. This methodology has implications for interpretation beyond issues around conflict resolution to include such matters as human rights and gender equality in Islam.

Introduction

Issues of foreign policy seldom feature in discussions of social inclusion, although one can point to a number of cases where global issues have aroused public concern to the extent of producing a shift in foreign policy. One example was in the opposition to apartheid in South Africa and calls for racial equality that prompted governments around the world to shift their policies on South Africa and support the imposition of sanctions. Another example was the change in Western governments' stances on Indonesia's occupation of East Timor. For the most part, however, matters of foreign policy tend not to attract significant attention from the general public in the West (Gyngell and Wesley 2003).

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Within the context of the Western political systems, this leaves scope for certain minority groups to feel that their concerns are ignored or that they are excluded from a role in informing government policy. Such perceptions can amount to feelings of marginalisation and alienation among such groups. A case in point is the social exclusion felt by many Western-based Muslims because of their governments' seemingly pro-Israel policy on the issue of Palestine. This chapter will focus on the inconsistency of many such policies among Western governments, not only with the sentiments of large segments of their populations, but also the inconsistency between such policies and current research and trends within the field of conflict resolution.

The second part of the chapter will explore how the gap might be bridged by a shift in strategy among the Islamists in Palestine. I will present a new methodology based on social science research, contextualisation and a *maqasid* or objective-oriented approach. This methodology has implications for interpretation beyond issues merely concerned with conflict resolution to include such matters as human rights and gender equality in Islam. The issue of gender equality in the Qur'an will be specifically addressed using a methodology of interpretation based on contextualisation and a higher objective (*maqasid*) approach.

Inconsistencies in Western Foreign Policies

Although little quantitative data exist, anecdotal evidence suggests that a just resolution of the Israel-Palestine conflict is a primary concern of most Muslims globally. The Israel-Palestine conflict is arguably still the central conflict in the world today, particularly in terms of relations between 'Islam' and the 'West'. It is a conflict that is of deep concern to people and governments across the Arab and Muslim world as well as those in the West. Polls conducted in the Arab and Muslim world have consistently shown that overwhelming majorities regard Palestine as the single most important issue to them personally (Hirst 2003).

In a poll conducted between March and May 2006 by the Pew Research Centre, nearly all Egyptians and Jordanians (97%) said that they sympathise with the Palestinians. Almost three-quarters of Indonesians (72%) expressed the same sentiment, while 63% of Turks and 59% of Pakistanis also support the Palestinian cause (Doherty et al. 2006). Research on the attitudes of Muslim Lebanese, Jordanians, Palestinians and Syrians toward Israel found two main unifying factors: "the role of Islam in society and perceptions toward Israel" (Khashan 2000). Khashan's study found that, for 85% of respondents, the Palestine question essentially concerns the Arab-Islamic world, while only 5% stated that the issue essentially concerns Palestinians only.

The Israel-Palestine conflict is also of significant concern to the Western world. Over 85% of Americans consider that a resolution of the conflict should be an important US foreign policy goal. In a January 2005 Pew poll, just over one-third of Americans stated that a permanent settlement of the Israel-Palestine conflict should be the top US foreign policy priority, while another 42% said it should be a high

priority. These percentages have remained fairly constant in Pew polls since 1993 (Allen and Tyson, pewresearch.org 2006). The majority of Americans also believe that there cannot be peace in the Middle East without a resolution of the Israel-Palestine conflict and that a resolution of this conflict is important for winning the 'war on terror' and, in turn, that it would reduce the likelihood of terrorism (WorldPublicOpinion.org 2007).

It is noteworthy that these findings come at a time when the perception of Israel around the world is highly negative. A poll conducted by the European Commission with a sample of 7,500 Europeans (500 from each of the then 14 EU member-nations) found that 59% placed Israel at the top of the list of nations that threaten world peace (Beaumont, guardian.co.uk 2003). Additionally, in a poll conducted across 27 countries for the BBC World Service by PIPA and GlobeScan in late 2006 and early 2007, respondents were asked to rate 12 countries – Britain, Canada, China, France, India, Iran, Israel, Japan, North Korea, Russia, USA, Venezuela, and the European Union, as having a positive or negative influence. A majority of respondents stated that Israel and Iran have a mainly negative influence in the world (Kull and Miller, WorldPublicOpinion.org 2007).

An average of 56% across the 27 countries have a mainly negative view of Israel, with only 17% having a positive view, which was the least positive rating for any country evaluated. In 23 countries, the most common view was negative, with only two leaning towards a positive view (Nigeria and the US) and two divided (Kenya and India). The most negative views of Israel were found in the predominantly Muslim countries surveyed, including Lebanon (85%), Egypt (78%), Turkey (76%), UAE (73%) and Indonesia (71%). Negative views of Israel were also expressed by large majorities in Europe, including Germany (77%), Greece (68%), France (66%), and Britain (65%) as well as in other countries, including Brazil (72%), Australia (68%), South Korea (62%), and China (57%) (Kull and Miller, WorldPublicOpinion.org 2007).

Given these statistics, one wonders whether gestures made by Western leaders, such as Chancellor Merkel of Germany or Prime Minister Rudd of Australia, are at odds with the opinions of their people. On 12 March 2008, Rudd moved a motion in the Australian parliament to celebrate 60 years of Israel's independence, while on 18 March, Merkel addressed the Israeli Knesset, expressing 'shame' over the holocaust and affirming Germany's special responsibility toward Israel on its account.

In Australia, not only did many members of Rudd's own party refuse to attend the session of parliament but others walked out during his address. Furthermore, numerous individuals, groups, organisations, and unions publicly voiced their objections to the motion through letters, protests, and a large advertisement on page seven of the nation's national daily, *The Australian*, which carried the headline 'Improper motion needs proper action' and the subheading 'Not in our name'. The advertisement tied the creation of Israel in 1948 to the ethnic cleansing of half the indigenous Palestinian population at the time. In Germany, polls following the Chancellor's visit showed that a majority of Germans rejected her statements, specifically the notion that Germany still has a 'special responsibility' to Israel because of the holocaust (Weinthal, www.jpost.com 2008).

More recently, in addition to consistent and repeated calls from Australian Muslim organizations for the Australian government to support a just resolution of the Israel-Palestine conflict, over 50 prominent Church leaders and heads of church-related international aid organisations in Australia called on the Australian government to support a just peace. In their statement issued on 4 June 2008, the Heads of Churches recommended that the Australian government: remain open to even a one-state solution; recognise the plight of Palestinian people under decades of military occupation; and, advocate for the implementation of international law in reaching a negotiated peace (assembly.uca.org.au 2008).

It is in this context that significant potential exists for transnational Palestine advocacy networks, which play an essential role in the diffusion of international norms and pressuring world leaders to adhere to these norms. For example, in the case of apartheid in South Africa, Audie Klotz (1995) writes that the “extraordinary success of transnational anti-apartheid activists in generating U.S. sanctions against South Africa offers evidence that norms, independent of strategic and economic considerations, are an important factor in determining great powers’ policies.” (p. 94) It is noteworthy, explains Klotz, that not only did the US and Britain impose sanctions on South Africa at a time when the Cold War was still ongoing but that they followed rather than led the movement.

The United Nations (UN) and international law have a major role to play in this process. It is noteworthy that a resolution of the Israel-Palestine conflict is a top priority for the UN. Addressing the General Assembly on 19 September 2006, the then UN Secretary-General, Kofi Annan, tied the success of the UN, and even the war on terror, to the ability of the Security Council to resolve the Israel-Palestine conflict on the basis of its resolutions:

As long as the Security Council is unable to end this conflict, and the now nearly 40-year-old occupation, by bringing both sides to accept and implement its resolutions, so long will respect for the United Nations continue to decline. So long, too, will our impartiality be questioned. So long will our best efforts to resolve other conflicts be resisted, including those in Iraq and Afghanistan. (Annan, www.un.org 2006)

Further to this point, there exist deep inconsistencies between Western government policies on the Palestine issue and current trends in conflict resolution research. Again taking Australia as a case in point, the major flaw of this government’s foreign policy on Palestine is that it supports a peace process that insists upon negotiations between two highly asymmetrical parties and, more importantly, this process almost completely ignores decades of international law passed directly in regard to the Israel-Palestine conflict. Governments of such nations as the US and Australia continue to support negotiations over such issues as the right of return of Palestinians refugees, Israeli settlements on Palestinian land, and the status of Jerusalem when these issues have been unambiguously decided by the UNSC and have already passed into international law.

The absence of reference to international law, specifically the relevant UN resolutions, has in recent years become a major theme in the literature on the failure of the peace process. Cheryl Rubenberg (2003), for instance, finds the fact that the

Oslo Accords were “not based on any aspect of international law or UN resolutions relating to the Israeli-Palestinian conflict” to be their “most important defect”. They could not lead to peace because they were “not based on law, rights, or precedent but on a political agreement between two parties that are depicted as symmetrical.” (p. 87)

This assessment finds agreement with numerous scholars and specialists on conflict resolution, including Johan Galtung. Galtung et al. (2002) highlight the Oslo Accords’ inconsistency with international law as central to their failure. They state that the “Oslo Accords failed in almost every way to lay the foundations for a stable and lasting peace” as they “did not deal with any of the questions most relevant to the conflict or the underlying structures and mindsets.” Beyond their failure to address the underlying causes of the conflict, Galtung et al. write that the Accords “promoted solutions which themselves further enforce the structure of violence, and has sought to ensconce the hegemony and domination of one of the parties to the conflict.” (pp. 58–59)

In the assessment of Charles Smith (2004), the Roadmap will (if it already has not) meet the same fate as the Oslo Accords because both suffer from the same fundamental flaws. Like the Oslo Accords, the Roadmap places a disproportionate emphasis on Israeli security and treats the conflicting parties as if there exists between them symmetry of power and potential. Smith writes that the phrasing of certain fundamental points in the document, such as the nature of the envisioned Palestinian state, is done so on the basis of Israeli interests rather than an objective standard consistent with law and the rights of both parties. Similarly, the work of the late Tanya Reinhart (2006) provides a compelling critique of the Roadmap, demonstrating that, far from leading to peace and in contravention of international law, the initiative further entrenches Israel’s control over the occupied territories. This is done through settlement construction, a network of roads and highways and the separation barrier which have effectively annexed Palestinian land to Israel, making Palestinian self-determination even more distant.

Alvaro de Soto was the United Nations Under-Secretary General, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary General to the Palestinian Liberation Organisation and the Palestinian Authority, and Envoy to the Quartet from 1 June 2005 to 7 May 2007. Reinhart’s observations are reaffirmed in his ‘End of Mission’ report to the UN in which he expresses major objections to the fact that the positions taken by the Quartet were not likely to be supported by a majority in UN bodies, and are “at odds with UN Security Council resolutions and/or international law” (de Soto, image.guardian.co.uk 2007). De Soto reports that, owing to US pressure, the Quartet not only failed to hold Israel to its responsibilities under the Fourth Geneva Convention, or enforce the advisory opinion of the International Court of Justice (ICJ) concerning the barrier, but even accepted Israel’s non-compliance with its Roadmap obligations – including freezing settlement construction, dismantling unauthorised settlement outposts, opening Palestinian institutions in East Jerusalem, and facilitating the movement of PA representatives and its AMA obligations. According to the Agreement on Movement and Access (AMA) signed on 15 November 2005, Israel’s obligations include easing West Bank checkpoints,

reaching targets for movement through crossing points in and out of Gaza, and facilitating a seaport and airport in Gaza.

For a number of observers, the assertion that the relevant UN resolutions must form the framework of a peace initiative if it is to be successful has been a long-standing one. William Mallison and Sally Mallison (1974), for instance, assert that a resolution based on international law is

...the only practical alternative to an indefinite continuation of the present situation. It may be predicted with considerable assurance that if the present Middle East peace conference is to reach toward peace based on justice, it will have to employ the principled criteria of international law. Another so-called "practical" settlement based upon naked power bargaining and calculation will, at best, provide a short interlude between intense hostilities. (p. 87).

Indeed, over 30 years later, the authors' predictions have continued to be proven correct. They further explain that the incorporation of international law in a resolution of the conflict is essential in terms of moving it "from a situation of conflict to one of basic order and then to optimum order." (Mallison and Mallison 1974, p. 87).

Others, such as Francis Boyle, John Quigley and Jean Allain, regard the Fourth Geneva Convention, the Universal Declaration of Human Rights, the resolutions of the UN General Assembly and Security Council and the Advisory Opinion of the International Court of Justice as fundamental sources for understanding, assessing and resolving the Israel-Palestine conflict. Boyle, for instance, states that "there is no way anyone can even begin to comprehend the Israeli-Palestinian conflict and how to resolve it without developing a basic working knowledge of the principles of international law and human rights related thereto." (Boyle 2003, p. 23)

Quigley remarks that "most writers on the Israeli-Palestinian conflict find an emphasis on legal entitlement to be unrealistic, even counterproductive ...and say that if settlement proposals are confined to propositions based on international law, no agreement will be reached." Encapsulating the sentiments of this paper, he acknowledges the difficulty, but remains convinced that "a peace not based on justice may turn out to be no peace at all." (Quigley 2005, p. xii)

In the immediate aftermath of '9/11', sentiments among Western publics were favourable to unilateralism in response to conflict or, more specifically, terrorism. Largely on account of the perceived failure of the 'war on terror', however, support for multilateralism has been re-established. Principally, there has been renewed support around the world for the UN to play the leading role in conflict resolution. Recent poll data suggest that there exists strong international will to resolve the Israel-Palestine conflict within the framework provided by the UN and its resolutions.

Research published by The Chicago Council on Global Affairs and WorldPublicOpinion.org in 2007 found considerable support for the UN, which is seen around the world as the key organisation for conflict resolution according to the report. Across all 12 countries surveyed, majorities in eight (US, Armenia, Poland, France, Palestine, Israel, China, and India) and pluralities in four (Argentina, Russia, Ukraine, and Thailand), supported the UNSC authorising the use of military force to protect people from severe human rights violations, such as genocide, even if the

government in question is opposed (Chicago Council on Global Affairs and WorldPublicOpinion.org 2007). It is noteworthy that the highest levels of support were found in China (76%), US (74%), Palestine (69%) and Israel (64%). Additionally, an average of 74% of respondents in the countries surveyed said that the UNSC has the right to defend a country that has been attacked, an average of 69% supported the UN stopping a country from supporting terrorist groups, and an average of 48% supported the UN restoring by force a democratic government that had been overthrown (Chicago Council on Global Affairs and WorldPublicOpinion.org 2007).

Most relevant to this paper, however, is that, across the countries surveyed, most respondents said they were willing to accept UN decisions even if those decisions went against the preference of their own country. Ten countries (four majorities and six pluralities) out of 16 surveyed agreed to accept such UN decisions. Those with the highest proportions of respondents willing to accept UN decisions were China (78%), France (68%), US (60%) and Israel (54%). The fact that 54% of Israelis agreed (although 38% disagreed) that “when dealing with international problems, Israel should be more willing to make decisions within the United Nations even if that means Israel will sometimes have to go along with a policy that is not its first choice” is highly significant in terms of the viability of a UN-defined resolution of the conflict (Chicago Council on Global Affairs and WorldPublicOpinion.org 2007).

Equally significant is that Americans also support a peace process led by the UN rather than the US. In May 2002, when PIPA asked Americans who should take the lead in the Israel-Palestine peace process, only 13% favoured the US taking the lead. A very strong majority of 68% favoured a multilateral approach, with the largest proportion (41%) favouring the UN. Moreover, most Americans (56%) believe that the UN is most capable of being even-handed and dealing fairly with both parties, with the EU ranked as the next best option (44%). A strong majority of Americans recognise that the US is not a fair broker in the Israel-Palestine peace process. In January 2006, a Public Agenda poll asked if the criticism that ‘US policies are too pro-Israel for the US to be able to broker peace between Israel and the Palestinians’ was justified or not. Sixty-two percent said that it was justified, while only 25% said it was not justified at all (WorldPublicOpinion.org 2006). Perhaps most compelling, though, is that the same poll also reported that two-thirds of Americans support a resolution of the Israel-Palestine conflict to be decided by the UNSC (WorldPublicOpinion.org 2006).

Bridging the Gap

Ostensibly, the pro-Israel policies of most Western governments relate to concerns over the security of Israel, a perceived fellow Western nation and ally in the region. As I have argued elsewhere, the Israel-Palestine conflict is a case of competing norms (Palestinian self-determination versus Israeli self-defence). Particularly in a post-9/11 world, Palestinian use of violence is detrimental to the Palestinian cause

as it legitimises Israeli claims of self-defence in regard to policies and practices that would otherwise be seen in the West as repressive human rights violations unbecoming of a Western democracy. As I have also argued elsewhere, non-violent Palestinian resistance is more conducive than violence to achieving a just peace.

There is a large body of literature concerning the effectiveness of the first intifada, which was an uprising based mostly on non-violent resistance. Among the most significant outcomes were the legitimacy, in the West and Israel, that was accorded to Palestinian territorial and political claims, the evaluation of the Palestinian right to self-determination, and particularly the shaming of Israel and its loss of the moral high ground. Israel's status as a 'Western' nation was brought into question owing to its 'iron fist' response to the first intifada, which not only undermined the portrait of a 'benign' occupation, but also led many to question Israel's 'Western' character as the "images of routine beatings, detention...and other violations of human rights caused many to mumble [including those in the US administration] that Israel resembled a 'Third World' and not a 'Western' state." (Barnett 1996, p. 441). Israel's response to the intifada signalled to the US that "the shared values that joined US and Israel might be eroding" on account of the observation that "a traditional marker used to separate Israel and the Arab states in the American mind was deteriorating because Israeli behaviour more closely resembled that expected from the Arab states." (Barnett 1996, p. 441).

Support for Israel in the West depends on its image as a Western democracy, but this factor is seriously underappreciated in Muslim thought. Palestinians during the first intifada failed to fully exploit the identity crisis that Israel was suffering in the West at the time. It was difficult to maintain a non-violent intifada; non-violence easily gave way to violence after a relatively short time owing to Palestinian 'ambivalence' to the concept and the pride of place of armed resistance among influential Palestinian groups like Hamas and Islamic Jihad. Amid the collapse of the first intifada, The Centre for the Study of Non-violence in Palestine concluded that the perception among Palestinians of non-violence as 'strange to Islam' was widespread and difficult to combat (Abu-Nimer 2003). The Islamic resurgence since the 1970s has brought with it an interpretation of *jihad* that is consistent with the classical doctrine. This interpretation equates *jihad* with the use of armed force. Non-violence is currently underutilised as it is without Islamic legitimacy or a normative status as a form of resistance among Muslims at large, including Palestinians.

Contextualization

A reconstruction of *jihad* is necessary but will be useless if devoid of Islamic legitimacy and authenticity. Legitimacy and authenticity can be achieved through the integration of two methods of interpretation, namely, contextualization and a *maqasid*, or objective-oriented approach. Contextualization is an approach to interpreting the Quran that requires consideration of the text as a whole, the position of verses within the text, the circumstances or conditions of the Prophet Muhammad

and the early Muslim community at the time of the revelation, and the contemporary situation or issue for which the Qur'anic guidance is sought. The contextualist approach actually originates with the companions of the Prophet but has been marginalized and even condemned by proponents of the more dominant literalist or textualist approaches (Saeed 2006).

The 'contextualists' are those scholars who "emphasise the socio-historical context of the ethico-legal content of the Quran and of its subsequent interpretations" and support a reading of the Quran based on the "political, social, historical, cultural, and economic contexts in which the content was revealed, interpreted and applied" (Saeed 2006, p. 3). As opposed to 'textualists', who base their claim of an 'objective' understanding of the meaning of the Qur'an on "linguistic evidence and historical reports", contextualists find meaning to be subjective and based on differing time, places, and circumstances (Saeed 2006, p. 103). Consequently, diversity in interpretation is to be expected with the differing experiences, beliefs, prejudices and values of different interpreters.

The late Fazlur Rahman (d. 1988) explains that the failure to appreciate the unity of the Qur'anic verses resulted in the emergence of an alternative worldview from that intended by the Qur'an. Historically, Islamic law has suffered from "the lack of an adequate method for understanding the Qur'an." Central to this shortcoming was a failure to appreciate the "underlying unity of the Quran...coupled with a practical insistence upon fixing on words of various verses in isolation", referred to as the 'atomistic' approach. The overriding problem with this approach is that "laws were often derived from verses that were not at all legal in intent." (Rahman 1984, p. 3)

Maqasid

The shariah laws are not imposed for their own sake but for the purpose of realizing certain objectives and benefits and avoiding certain harms. Kamali writes that "when there is change of a kind whereby a particular law no longer secures its underlying purpose and rationale, it must be substituted with a suitable alternative. To do otherwise would mean neglecting the objective of the Lawgiver [God]." (Kamali 2006, pp. 51–52) Adherence to this maxim is fundamental to the efficacy of any contemporary methodology of interpretation. Such an approach is the basis of the theory of *maqasid*. The word '*maqasid*' is the plural of '*maqad*', meaning purpose or objective. The scholars of Islamic law have defined the term in reference to the purpose and objectives of the law and its sources, specifically the Qur'an and the Prophetic Traditions. The theory of *maqasid* holds that human interest or benefit and the objectives of the law are interlinked and that "... any independent interpretation of the principles of jurisprudence must be based on what is termed *istislah* [interest-based reasoning], and that one's understanding of the relevant texts and the conclusions one draws from them must be based on the principle that the objectives of such texts are to achieve benefit and prevent harm." (Raysuni 2006, p. 46)

The work of Abu Ishaq al-Shatibi (d.1388), however, made a profound contribution to developing the theory of *maqasid* by focusing on the concept of *maslaha* or ‘public interest’ as an approach to overcoming the rigidity imposed by literalism and *qiyas* (analogical reasoning). The *maqasid* theory of Shatibi is based on an inductive reading of the Qur’an in order to identify the higher objectives, intent and purpose of the divine laws which are intended to preserve human interests in both this world and the next. Shatibi’s theory asserts that no commandment of God is intended to cause harm for its own sake, although some actions may require struggle and hardship. All legal rulings are intended to achieve ‘balance’ and ‘moderation’ by steering Muslims toward a middle course between various types of extremes. Shatibi also emphasises consideration for outcomes or consequences. He explains that part of the objective-oriented approach is considering the outcomes of actions, in accordance with the Sunnah (conduct) of the Prophet who would consider outcomes and consequences before passing judgement or taking action (cf. Raysuni 2006, pp. 317–323).

Shatibi’s theory of *maqasid* is founded on, and originates in, the Maliki School of Islamic legal thought which, unlike the others, possesses an inherent concern for the objectives of Islamic law. Raysuni (2006) refers to the Maliki School as “... the school of human interest and *istislah*,” (p. 296). It is the school most concerned with warding off potential evil and harm. He provides extensive documentation of the development of the Maliki School and explains that its knowledge and methods originate with the second Caliph, Umar bin al-Khattab (d.644).

The rulings of Umar establish important precedents in the context of changing rulings according to changing circumstances and higher objectives. In matters pertaining to *zakat*, divorce, crime and punishment, and even the distribution of conquered lands, Umar made rulings that not only differed from the rules established by the Prophet Muhammad but with the letter of the Qur’an. Umar’s rulings were made according to the principles of the Qur’an and the Prophet’s teachings. This is not how his rulings were understood, however, by the classical jurists who established the Islamic law and doctrines. For scholars such as Shafi’i (d.820), the changes were “... incorporated in the developing body of law and legitimised as part of the Sunnah,” (Saeed 2006, p. 87) thereby rejecting the incorporation of contextualisation or a *maqasid*-oriented approach into the theory of Islamic jurisprudence.

Shatibi’s theory of *maqasid* was a response to the challenges presented by social change and the needs of Muslim Spain at the time. The thirteenth century was a period of turmoil for the Muslim world, particularly for those regions that suffered the invasion of the Mongols. By contrast, the fourteenth century was a period of relative peace and political stability that allowed intellectual activity to resume. Much of this work sought to re-evaluate tradition in light of the social, political, financial, commercial, and religious changes that had occurred (Masud 1995). Similarly, social, political, and economic change has been the catalyst for a renewed focus on the *maqasid* today.

In the modern era, the most significant contribution to the *maqasid* was made by Ibn Ashur. First published in 1946 in Tunis, Ibn Ashur’s *Maqasid al-Shariah*

al-Islamiyyah is arguably the most important attempt of the twentieth century to further develop the theory of *maqasid*. Expressing the need for an objective-based approach to Islamic law in light of modern realities, he introduces to the theory of *maqasid* the preservation of the family system, freedom of belief, orderliness, natural disposition, civility, human rights, freedom and equality as objectives of Islamic law.

In contemporary times, Yusuf Qaradawi has further extended the *maqasid* list to include social welfare support, freedom, human dignity and human fraternity, while Kamali has added to this list the protection of fundamental rights and liberties, economic development, along with research and development in science and technology (cf. Kamali 2006, pp. 118–119). Like their predecessors, both scholars base their additions on relevant supporting texts of the Qur'an and Prophetic Traditions. Kamali contends that the *maqasid* remains dynamic and open to expansion according to the priorities of every age. In isolation, however, the theory of *maqasid* remains deficient to the extent that it does not systematically address the issue of context. This is of especial importance to the issue of women in Islam, their proper place in the tradition and the species and level of rights owed to them.

Non-violent *Jihad*

Social science research into the case of Palestine exemplifies the necessity to reformulate the classical doctrine of *jihad*. The dominant conceptualization and application of *jihad* has been in militaristic terms, rendering armed struggle the most authoritative or 'Islamicly' legitimate response to conflict and relations with non-Muslim enemies. Reform in the interpretation of the Qur'an and Prophetic Traditions needs to be based on contextualization so as to make accessible the broadest possible range of strategies in response to conflict contained in these sources. The specific method through which this contextualization should be guided is a *maqasid* or objective-oriented approach. This approach establishes two fundamental points: *jihad* is not an end in itself but a means of self-defence, overcoming oppression, and establishing a just peace; and, *jihad* has no preordained form but is a concept that can refer to multiple strategies. In order to determine the most appropriate strategy, empirical analysis of the issue at hand is required.

Shatibi, Ibn Ashur, and others contend that the most reliable method for understanding the Qur'an and identifying the intent, objectives and purpose of its content is to undertake an inductive, thematic reading of the text or '*istiqra*'. The nature and structure of the Qur'an necessitates that verses in question are analysed collectively to enable the realization of common themes, overriding objectives and a more thorough understanding. Approximately 150 Qur'anic verses can be identified that directly relate to the issue of war and peace in Islam. In particular, there are nine chapters of the Qur'an (2, 3, 4, 8, 9, 22, 47, 48, and 60) in which matters concerning war and peace are specifically addressed. Additionally, there are other verses outside of these chapters that are also relevant.

This approach reveals that issues of war and peace in the Qur'an are principally addressed in the context of self-defence and faith in God. The verses specifically commanding or encouraging Muslims to engage in the use of armed force were all revealed when Muslims were already in a state of war with their enemies. Fighting was endorsed as a means of preserving the lives and religion of the Muslims. Moreover, central to the matter is the concept of justice; because of the oppression they had suffered, particularly the dispossession of their homes and land, the Muslims were permitted to fight. While the Qur'an is unambiguous that killing is a grave sin, even to the extent that killing one person is likened to killing the whole of humanity (Qur'an, 5:32), oppression is considered by the Qur'an to be worse than killing (Qur'an, 2:191).

All this having been said, even the most comprehensive analysis of the Qur'anic verses on war and peace does not reveal strong support for non-violence in any particular verse. In fact, the opposite is true; specific verses of the Qur'an appear to endorse the use of armed force, albeit with conditions. Fighting in the path of God is highly praised and is regarded by the Qur'an as a mark of faith worthy of the highest rewards from God. From the *maqasid*-oriented perspective, however, this does not preclude the possibility of non-violent *jihad*. Shatibi explains that, while a *maqсад* might not be identifiable from a single verse of the Qur'an, the reading of multiple verses on a certain issue will reveal an associated purpose, intent or objective (Raysuni 2006; Masud 1995). Kamali (2006) elaborates:

There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. (p. 124)

Raysuni (2006) concurs, contending that "... every principle which is in keeping with the actions of the Lawgiver [God] and whose meaning is derived from sufficiently numerous and varied pieces of evidence that it may be affirmed with definitive certainty may be built upon and treated as authoritative even if it is not attested to by any specific text." (p. 323).

Fighting was the prescribed means at the time as it was the most effective and, arguably, the only means of defence, security and liberation, given the socio-historical context of seventh century Arabia. Moreover, the context in which the Abbasid Empire reigned (750–1258) was marked by war and conflict which encouraged the jurists of the time to more closely identify with the later, more militant verses of the Qur'an concerning issues of war and peace, rather than with earlier, more conciliatory verses. Indeed, the later, more militant conduct of the Prophet in response to the aggression of his enemies resonated with the Abbasid jurists more so than the restraint and non-violent approach he displayed during the earlier years of his prophethood (AbuSulayman 1993). In fact, the perception of armed combat as the most effective means of defence, security and liberation remained throughout human history and, only since the mid-twentieth century – with the establishment of international law, the United Nations, peace being regarded as the normal basis of relations between nations, and the prominence of international human rights norms – is there even the possibility of an alternative to the use of armed force.

Ibn Ashur's explanation that 'means are not intended for their own sake but for the realisation of certain ends' is particularly important in the context of *jihad*. The actual act of combat or the use of armed force is a means, a method of performing *jihad* and not an end in itself; combative *jihad* is not necessarily a legal requirement in all circumstances of conflict. In fact, the legal verses or 'ayat al-ahkam', contained in the Qur'an, number only about 350 out of a total of 6,235 (Kamali 2006, p. 17). According to Kamali, 140 of these verses refer to devotional matters (prayer, fasting, charity, pilgrimage), 70 concern family matters (marriage, divorce, custody, maintenance, inheritance), 70 relate to commercial transactions (sale, loans, leases, mortgage), 30 are about crimes and penalties (murder, theft, robbery, adultery, slander), 30 address issues of socio-political order (justice, equality, evidence, consultation, rights and duties of citizens) and 10 are about economic matters (relations between rich and poor, workers' rights and conditions). Notably absent from inclusion in the *ayat al-ahkam* are verses pertaining to war and peace, including those concerning *jihad* and *qital* (armed combat). It should, therefore, be clear that the strategy or method of *jihad* is not a matter of divine law but a question of the appropriate response to a given context.

Louay Safi draws a distinction between *jihad* as a "permanent obligation incumbent upon Muslims" and the most appropriate "method" of jihad to be used in prevailing circumstances. He states that "while the Muslim Ummah [international Muslim community] is obliged to uphold the principle of jihad and satisfy its requirements, the method of honouring this principle is a question of strategy." (Safi 2001, p. 41) For Safi, the question of strategy remains open even in circumstances where the task demands eliminating oppression, protecting human life, defending Muslim sovereignty or upholding Islamic law.

AbuSulayman (1993) agrees, arguing that the maximum number of options should be available to Muslims: "Muslims should always be able to resort to persuasion, sabr (patience), as well as qital (fighting), psychological as well as physical etc., according to their immediate needs." (p. 118) The strategy or the method of *jihad* "... is not an arbitrary decision, but one that takes into account the general conditions of both the Muslim community and its adversaries, including the military balance between the Muslims and their enemies and the morale of the Muslim army." (Safi 2001, p. 43).

A central argument of this paper is that understanding, theory and knowledge are the product of human experience (Habermas 1978), derived from a particular social and political context. A central function of theory is to recognize and respond to changing social and political realities by reforming or rejecting old concepts and developing new ones (Cox 1986). Just as a militant understanding, interpretation and application of jihad became dominant in the Muslim world in response to particular historical and political realities and conditions, contemporary realities and conditions are such that the Palestinians do not have a military option in their conflict with Israel and that the attainment of their political aspirations are determined by the extent to which they can generate sufficient moral power with which to confront Israel.

A militant understanding, interpretation and application of *jihad* have endured as the predominant norm among Muslims (Rane 2007). This is not to suggest that alternative, more conciliatory views on jihad, war and peace, and relations with non-Muslims have not also been expressed by various Muslim scholars throughout Islamic history. All the same, non-violent resistance is yet to be recognized in the Islamic tradition as a legitimate and normative form of *jihad*. Essentially, there has been a lack of appreciation for context, a general neglect on the part of Muslims to examine social, political, economic and other conditions in their understanding, interpretation and application of Islamic laws, coupled with a general failure to systematically incorporate the issues of context and higher objectives into a contemporary method of interpretation. This criticism extends to a range of issues including interpretations of human rights and issues of gender equality in Islam.

Gender Equality

The following demonstrates the application of the contextual-*maqasid* methodology to the issue of gender equality as addressed in the Qur'an. For the purpose of this discussion, I have used 'women', 'woman', 'mate', 'wife', 'wives', 'daughter', 'mother', 'queen' as well as the names of women mentioned in the Qur'an, such as 'Mary', as search terms. This yielded almost 200 verses that we can consider to be most relevant to understanding the Qur'an's view of gender issues.

Many of the Qur'anic verses concerning women arise in the context of family matters, namely marriage, divorce, and inheritance. In such verses the Quran establishes certain rules of marriage (Qur'an 4:22–24, 33:50, 2:221, 2:235, and 60:10), guidelines for divorce (Qur'an 2:229–241, 4:20, 4:130, 4:128, 65:1, and 66:5), and details of inheritance (Qur'an 4:7, and 4:11–12). The underlying principle of these verses is that a woman is an independent entity with rights (Qur'an 2:233 and 4:32) and whose will is acknowledged (Qur'an 2:231–232) and who is in charge of her own affairs (Qur'an 33:50). Men are regarded by the Qur'an as carers of women (Qur'an 4:34) but that women should have a say in decision making is expressed as normative (Qur'an 28:26). Moreover, the relationship between spouses is intended by the Qur'an to be a partnership (Qur'an 42:11) and the expectation is that women should be treated with kindness and fairness (Qur'an 4:25 and 33:49).

The most apparent theme of the Qur'an's perspective on gender relations is equality. The Qur'an repeatedly stresses the equality of believing men and women and the equal rewards they should expect to receive for their good deeds (Qur'an 3:195, 33:35–36, 40:40, 16:97, 48:5, 48:25, 49:11, 57:12, 57:18, 85:10, 71:28, 47:19, and 9:72). However, the Qur'an acknowledges that both men and women are capable of both good and bad (Qur'an 48:6, 57:13, 24:26, 33:73 and 9:67–71). Certain women are criticised in the Qur'an for their faithlessness, namely with wives of Noah and Lot (Qur'an 29:32–33, 66:10, 7:83, and 11:81), while other are highly praised, such as the wife of the Pharaoh (Qur'an 28:9 and 66:11) and Mary

the mother of Jesus (Qur'an 5:75, 5:110, 23:50, 66:12, and 3:42). The Qur'an does not accept the idea of original sin or ascribe specific blame to women. Rather, the book elaborates on the creation of man and woman in terms of equality (Qur'an 2:35, 7:19, 20:117, 39:6, 4:1, and 7:189). It also ridicules customs underlined by notions of gender inequality (Qur'an 6:139) as well as the idea that sons are superior to daughters (Qur'an 6:100, 37:149, 37:153, 43:16, 43:18 and 52:39).

In the context of marriage and divorce, the equality of men and women is continually emphasised. The very basis of marriage according to the Qur'an is 'love and compassion' (Qur'an 30:21). The Quran advocates that marriage should take place based on equitable terms (Qur'an 4:3–4, 4:25, and 4:127). Similarly, divorce should be conducted on the basis of equality and fairness (Qur'an 4:130, 4:128, 65:1, 65:6, 2:231–232, and 2:241).

In addition to equality, the other major theme of the Qur'an's perspective of women is dignity. The upholding of the dignity of women is repeatedly emphasised by the Qur'an (Qur'an 24:3–4, 24:23, 24:31, 24:60, 33:55, 33:58–59, 4:25, 5:5, and 2:241). The Qur'an imposes a harsh penalty for those who make slanderous accusations against a woman (Qur'an 24:4). It encourages modesty in dress for women in public as a means of protecting their dignity and protection from harassment (Qur'an 24:31 and 33:59). However, the Qur'an considers the participation of women in society as normative (Qur'an 28:23, 12:30–33, 12:51, and 3:61). It accepts a role for women in economic affairs (Qur'an 2:282) as well as their political participation (Qur'an 60:12). The book even gives legitimacy to female leadership through its discussion of the Queens of Sheba (Qur'an 27:36–38) and particularly the description of her throne as 'mighty' (Qur'an 27:23).

Taking these verses collectively, the spirit of the Qur'an is one of gender equality, the upholding of women's dignity, and her social, economic, and political participation as normative. All verses of the Qur'an concerning women should be read in this light. Thus, such verses as 2:282, which on the surface may suggest that the testimony of a woman is worth half as much as that of a man should be read in the social and historical context of seventh century Arabia. Economic participation and witnessing business contracts was a male privilege. The Qur'an legitimised the involvement of women in such activities. The provision of one male to two female witnesses should not be seen as a matter of female inferiority but a tactical response to prevailing social norms. The full and equal participation of women is consistent with the overall message of the Qur'an.

Similarly, for verse 4:34 to be read as an endorsement of women's subservience to man is to read this verse in contradiction to the spirit of the Qur'an. The prevailing norms of seventh century Arabia meant that the wellbeing of women was dependent on men, their fathers, brothers and husbands. The Qur'an, however, makes provision for the full and equal social, economic and political participation of women and is therefore open to change in social norms that would allow women to be more independent of men. The ability of women to inherit, own property, and remain in charge of the own affairs suggests that the Qur'an supports this level of equality.

Conclusion

Engagement in armed combat is not divinely ordained *per se* but was endorsed by the Qur'an in the context of particular historical and political circumstances. It is imperative to examine the circumstances pertinent to differing contexts over time and place in order to maintain the intent, purpose and objectives of 'divine' guidance. Contemporary realities and conditions of the Israel-Palestine conflict not only render the use of violence detrimental to the Palestinian cause of self-determination and further entrench the occupation and repression endured by the Palestinian people, but are contrary to the higher objectives of *jihad* as enshrined in the Qur'an.

A reformulation of *jihad* based on an integration of the method of contextualization and the *maqasid*-oriented approach offers Islamic legitimacy to non-violent resistance. Such an approach allows the transcendence of Israeli security concerns and supports Palestinian self-determination. Moreover, Palestinian non-violence would leave Western governments with little excuse for failing to shift their policies on the conflict in a direction conducive to achieving a just peace on the basis of UNSC resolutions and international human rights norms. The contextual-*maqasid* methodology also has broad implications beyond the issue of conflict resolution. As discussed in this chapter, this methodology of Qur'anic interpretation also allows issues concerning gender to be resolved in a way that upholds Islamic principles and values as well as contemporary universal ideals of gender equality.

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