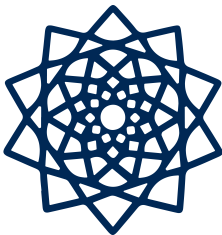


Civilian Immunity

in Foundational Islamic Strategic Thought:
A Historical Enquiry



Professor Joel Hayward

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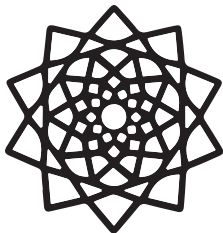
وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يَكْفُرُونَ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ۚ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْكَافِرِينَ

And fight in the way of God with those who fight against you, but
aggress not; God loves not the aggressors.

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FOREWORD

This study analyses the Qur'anic revelation and the preaching and practices of the Prophet Muhammad in order to ascertain what Islam in its initial manifestation taught regarding the responsibilities of Islamic armies and warriors towards the people that we nowadays call civilians and other non-combatants. It is clear that the divine revelation and the Prophet of Islam ushered in an era of humanity during warfare exceeding that found previously in Arabia and indeed virtually anywhere in the world. Muhammad did not intend war and its ravages to involve whole communities, but, rather, to involve only the combatants, whose aggression and willingness to take up arms made them culpable and subject to armed resistance. Understanding that Allah permitted self-defence against attack, he directed warfare to the attackers, but not to the enemy force's women, children, and elderly. Indeed, in keeping with modern international humanitarian law he forbade their deliberate targeting, unless they surrendered their rights to protection by taking part in combat. Extending this right to protection to the monks and other clergy who devoted themselves to religious practices, and then even to the kinds of property that we now call civilian infrastructure, Muhammad created a widespread environment of security that safeguarded the lives, and way of life, of most people even in warring communities. Popular misconceptions fuelled by the indiscriminate atrocities of Al-Qaeda, ISIS, Boko Haram

and other violent extremist groups are simply not based on an unbiased reading of the historical evidence. That evidence tells a totally different story to theirs: of a close compatibility between the early Islamic practices under the Prophet Muhammad's direction and the ethical code of civilian immunity embedded within western Just War theory and international humanitarian law. Aside from the combatants, Muslims were not to kill or otherwise harm the innocent and they were not to destroy their homes, infrastructure or means of survival.

ABOUT THE AUTHOR

Professor Joel Hayward is a New Zealand scholar, writer and poet who currently serves as Professor of Strategic Thought at the National Defense College of the UAE. He has held various academic posts, including Chair of the Department of Humanities and Social Sciences at Khalifa University (UAE) and Dean of the Royal Air Force College (UK). He is the author or editor of over a dozen books and monographs and many peer-reviewed articles, mainly in the fields of history and strategic studies. These include *Warfare in the Qur'an* (2012) and *War is Deceit: An Analysis of a Contentious Hadith on the Morality of Military Deception* (2017). He has given strategic advice to political and military leaders in several countries, has given policy advice to prominent sheikhs, and was tutor to His Royal Highness Prince William of Wales. In 2011 he was elected as a Fellow of the Royal Society of Arts and in 2012 he was elected as a Fellow of the Royal Historical Society. In 2016 he was named as the "Best Professor of Humanities and Social Sciences" at the

2016 Middle East Education Leadership Awards. Professor Joel is also active in the literary arts. He has published three books of fiction and four collections of poetry.



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Particularly since the Second World War—a global conflagration that left more than sixty million people dead, with around two-thirds of them being civilians—there has been a worldwide desire to protect civilians from harm during conflicts. This has led to the strengthening of both moral philosophical positions and specific international humanitarian laws on the need to ensure that civilians and other non-combatants are not deliberately targeted or carelessly attacked. Four years after the end of the Second World War, in 1949, the nations of the world signed and ratified the *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, commonly referred to as the Fourth Geneva Convention. While the other three conventions deal with combatants, the Fourth Geneva Convention is the first body of international humanitarian law to deal specifically and thoroughly with protections for civilians during wartime. Additional protocols were added to the Geneva Conventions in 1977, following the bloody and controversial Vietnam War, further strengthening the laws protecting civilians and non-combatants.

Within the Western philosophical tradition throughout the last two thousand years a body of ideas commonly known as “Just War” has increasingly stressed the need for military forces to distinguish between combatants and non-combatants, including civilians, and for the need for the latter to be exempt, as far as is reasonable and possible, from suffering and killing during war. At times closely linked with the reli-

gion of Christianity and shaped and championed by the clergy, Just War concepts are unmistakably imbedded in the Geneva Conventions. This does not mean that Christianity has a unique position on the need to safeguard civilians during wartime. All the major faiths have advanced similar ideas. Civilians and other non-combatants, all religions agree, should not be treated as hostile and punished with violence or cruelty.

This study will show that, evolving in parallel with Christian Just War ideas, Islamic law and philosophy also advanced ever-strengthening rules and norms on the need to minimize harm during wartime to those whom we now call civilians. Right from the first Qur'anic revelation in the year 610 CE, the Islamic Prophet Muhammad and his followers, and the scholars who began to transform orally conveyed ideas, rules and practices into written law and philosophy in the eighth and ninth centuries CE, advanced ideas about warfare that included the responsibility of Muslim leaders, commanders and combatants to protect civilians and minimize their suffering.

The Arabic equivalent of a word for "civilian" does not appear in the Qur'an, Islam's holy book, and it cannot be found as a simple, single word in the *abadith*, the recorded sayings of the Prophet Muhammad. We should not be surprised. In the West, the English word "civilian" (from an Old French root with a different meaning) only gained its current meaning in the nineteenth century as someone who is not in a military or paramilitary force. Yet the *concept* of a class or category of people who should not be targeted or otherwise harmed can be found in both the Qur'an and the *abadith*, and these two

sources will be used to reveal the origins of the Islamic position that the people we now call civilians should be protected.

This study maintains a tight focus only on the lifetime of the Prophet Muhammad and his closest companions in order to shed light on what the earliest extant sources say about Muhammad's own understanding and practice of civilian and noncombatant protections during wartime. The varied and sometimes contradictory opinions of classical Islamic *fuqaha'* (jurists)—most from the ninth to thirteenth centuries CE—will be only examined in order to clarify what the Prophet might have meant by particular words or actions. How those scholars later translated the original framing concepts regarding the responsibilities and rights of combatants, fighters, warriors (المقاتلين, أهل القتال, and المحاربين) and non-fighters, non-warriors (غير المقاتلين and غير المحاربين) into written laws and philosophies as part of the Islamic *fiqh* (jurisprudence) is covered elsewhere in books of jurisprudence.

This study is a work of history, not of *fiqh*. The author is a historian, not a theologian or *faqih* (jurist). Using the established methodology of the historical discipline, this study attempts to reconstruct seventh-century events by evaluating and interpreting the earliest sources, all the while keeping issues of truth, objectivity and bias firmly in mind. It does not attempt to confront the *fiqh* as it later evolved, but to reach beyond it, or more accurately behind it in time, to the historical events that once occurred in seventh-century Arabia. As a modest contribution to the *Sirah* literature (the Prophet's biography), it attempts to illuminate thematically rather than merely chronologically certain practices from within the lifetime of the Prophet Muhammad. Its purpose is expository and

empirical, showing how and why things happened rather than being normative and offering guidance or direction on how things should be done now.

CIVILIAN IMMUNITY IN THE QUR'AN

Muslims believe that the Qur'an was revealed episodically by the angel Jibril (the biblical Gabriel) to Muhammad, a Meccan merchant in what is now Saudi Arabia, through a series of revelations from Allah over a period of twenty-three years beginning in the year 610 CE. Muhammad's companions memorised and wrote down the individual revelations almost straight away and compiled them into the Qur'an's final Arabic form very soon after his death in 632 CE. The order and wording of that Arabic version have not changed in the last fourteen hundred years. The Qur'an is therefore held by Muslims to be the very words of Allah, recorded precisely as originally revealed through Muhammad. This explains why most of the world's 1.6 billion Muslims¹ endeavour to learn at least the basics of Qur'anic Arabic so that they can read and more importantly *hear* Allah's literal words as originally revealed. This is also why they consider all translations into other languages to be decidedly inferior to the original Arabic. Muslims usually explain that these translations convey the "meaning" of the revelations, and are therefore still useful, but not the exact word-for-word declarations of Allah.²

In another study, I have analysed the Qur'an in depth and explained its codes of conduct in order to determine what the Qur'an actually requires or permits Muslims to do in terms of the use of military force.³ My analysis reveals that

the Qur'an is unambiguous: Muslims are prohibited from undertaking offensive violence and are compelled, if defensive warfare should become unavoidable, always to act within a code of ethical behaviour that is closely akin to, and compatible with, the western warrior code embedded within the Just War doctrine. Far from the Qur'an advocating the subjugation or killing of "infidels", its key and unequivocal concepts governing warfare are based on justice and a profound belief in the sanctity of human life.

The Qur'an's verses on war reveal Allah's permission for Muslims to fight back if they are assailed or threatened. In 623 or 624 CE, one or two years after the Prophet Muhammad's migration to Yathrib (soon after renamed Medina), he announced a revelation from Allah that Muslims were allowed physically to *defend* themselves to *preserve* themselves through the contest of arms. Most scholars agree that Surah 22:39 contains that first transformational statement of permission.⁴ Including the verses above and below, it says:

إِنَّ اللَّهَ يُدْفِعُ عَنِ الَّذِينَ آمَنُوا ۚ إِنَّ اللَّهَ لَا يُحِبُّ كُلَّ خَوَّانٍ كَوْرٍ ﴿٤٠﴾
 أُوذِيَ الَّذِينَ يَأْتُونَكَ بِالْحَبْرِ وَالْمَالِ وَالْمَنْفَعَةِ وَالْمَوَدَّةِ وَالْمَوَدَّةِ وَالْمَوَدَّةِ وَالْمَوَدَّةِ
 الَّذِينَ يَفْتَلُونَ بِأَنَّهُمْ ظَالِمُونَ وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ ﴿٤١﴾ الَّذِينَ
 أَخْرَجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبَّنَا اللَّهُ وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ
 بَعْضَهُمْ بِبَعْضٍ لَفَسَدَتِ السَّمَاوَاتُ وَالْأَرْضُ وَالْجِبَالُ ۚ وَلَٰكِن دَفَعَهُ اللَّهُ
 بِحُكْمِهِ وَأَنَّهُ يُدْفِعُ عَنِ الَّذِينَ آمَنُوا ۚ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ
 (الحج ٣٨-٤٠)

Truly Allah will defend those who believe: truly,
Allah does not love anyone who is a traitor to

faith, or shows ingratitude. (22:38) To those against whom war is made, permission is given [to fight], because they are wronged—and truly, Allah is Most Powerful for their aid. (22:39) [They are] those who have been expelled from their homes in defiance of right [for no cause] except that they say, “Our Lord is Allah”. And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might. (22:40)⁵

Qur’anic exegetes (textual analysts) believe that this divine permission to fight coincides with the Prophet Muhammad’s declaration of unity issued shortly after arriving in Yathrib, a town populated by competing and sometimes warring Jewish and pagan Arab tribes. Wanting to create “a single community to the exclusion of other people” (“انهم امة واحدة من دون الناس”), he drafted a “constitution” that would bind all these tribes together as a community in terms of what we now call domestic and foreign policies. This constitution—the text of which survives in Ibn Hisham’s *Al-Sirah al-Nabiwiyyah* and Abu ‘Ubayd al-Qasim ibn Sallam’s *Kitab al-Amwal*—contains a mutual defense pledge.⁶ Should one tribe within the new community be attacked, the others would come to its aid. It is against this backdrop, and following on from the intense persecution from the Quraysh tribe in Mecca that caused the migration of Muslims to the refuge-city of Medina, that

Muhammad announced the divine Qur’anic revelation now numbered as Surah 22:38-40. A hadith attributed to ‘Abd Allah ibn al-‘Abbas, one of Muhammad’s younger first cousins who spent a lot of time as a youth with the Prophet, states:

When the Prophet ﷺ was expelled from Makkah, Abu Bakr said to him: ‘They have driven out their Prophet, verily to Allah we belong and to Him we return. They are surely doomed.’ Then it was revealed: ‘To those against whom war is made, permission is given, because they are wronged—and verily, Allah is Most Powerful for their aid.’ Then I knew that there would be warfare [“قِتَالٌ”, literally “fighting”]. Ibn ‘Abbas said: ‘This is the first verse revealed concerning warfare.’⁷

Any fair-minded reading of this verse and hadith will find a self-defensive message at their core. Allah has granted to those who have been attacked the right to fight back. In another *ayah* (verse) revealed not long afterwards, in 623 or 624 CE, we find this self-defensive permission expressed as an obligation:

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ
 (البقرة ١٩٠)

Fight in the cause of Allah those who fight you, but do not transgress limits: for Allah loveth not the transgressors. (2:190)⁸

The important feature of these verses is that they reveal *who* can be fought: that is, the people doing the attacking.

Some of the early exegetes believed that these self-defensive verses were abrogated (a concept in Islam known as نسخ, Naskh)⁹ by later verses, such as the so-called “sword” verses (especially Surah 9:5 and 9:36), which called for offensive military action against the unbelievers “wherever they are found” (“فَاَقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ”).¹⁰ As I have shown elsewhere¹¹, these seemingly bellicose divine instructions actually applied only to specific unbelievers at a specific time in the life of the Prophet Muhammad and are not universal commands for Muslims to kill non-Muslims anywhere at any time. They do not supersede the peaceful or self-defensive verses.

My judgment reflects those of the most reliable commentators among the companions of the Prophet Muhammad, including 'Abd Allah ibn al-'Abbas, and early exegetes including 'Umar ibn Abd al-'Aziz and Mujahid ibn Jabr. They argue that the verse “Fight in the cause of Allah those who fight you” unmistakably refers *only* to those opponents who engage in warfare and not to others from within the warriors' community who are uninvolved: women, children and the aged, for example. In his magisterial commentary on the Qur'an, the early exegete Al-Tabari says of this verse:

Ibn 'Abbas explained the verse, “Fight in the way of Allah those who fight you but do not transgress, for Allah does not love transgressors,” [Surah 2:190] saying, “Do not kill women, children, old men, or whoever comes to you with peace and he restrains his hand from fighting, for if you did so you would have certainly transgressed.”¹²

Al-Tabari also quotes 'Umar ibn Abd al-'Aziz saying: “This refers to women, children, and whoever is not waging war

against you among them.”¹³ Likewise, the famous eighth-century scholar Muhammad ibn al-Hasan al-Shaybani, a disciple of Imam Abu Hanifa, who is sometimes called the father of Islamic international law¹⁴, argued in his *Kitab al-Siyar al-Kabir* that Surah 2:190 dictates that a Muslim army can only fight against an opposing army, without targeting women, children, the elderly and other categories of non-threatening people, such as monks in their monasteries.¹⁵

It is also worth noting that, even among those who favour the belief that the “sword” verses abrogated all earlier peaceful verses, not a single classical Islamic jurist or scholar advanced a view that the Qur’anic revelation required or permitted all non-Muslims—female and male, young and old, weak and strong, non-resisting and resisting—to be killed during wartime. Such an irrational view has only been articulated by strident and violent extremists nowadays, including Al-Qaeda and ISIS, whose use of terrorism has made it hard to remain discriminate. Justifying this indiscrimination, for example, Osama bin Laden quoted the “sword” verses in his February 1998 fatwa against America, and insisted:

The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim.¹⁶

Of course, bin Laden was not a cleric, jurist or historian of early Islam. He was a murderous extremist without judgement

or moderation. Like Abu Bakr al-Baghdadi the ISIS leader, bin Laden was not representative of Islamic belief or behaviour and he had no recognised status as an authority in Islamic jurisprudence that would allow him to issue a fatwa. His assertions that the verses of the sword and other martial Qur'anic verses permit indiscriminate killing do not possess authority or credibility, except perhaps among already-radicalised fanatics who share this worldview.

CIVILIAN AND NON-COMBATANT IMMUNITY IN THE *AHADITH*

In the eighth and ninth centuries CE, particularly in Iraq and Persia, certain scholars began to collect, evaluate, organise and publish collections of sayings and actions attributed to the Prophet Muhammad by chains of narrators leading back to companions who had purportedly heard or seen those statements or deeds. Despite the passage of at least a century since the Prophet's death, voluminous collections of these reports, called *ahadith* (أحاديث) in Arabic, began to form the basis of much of Islamic jurisprudence and philosophy. Indeed, within the Islamic *shari'ah*, the *ahadith* are considered the second most important and reliable source, surpassed only by the Qur'an.

WOMEN

There are many *ahadith* that address the issue of who cannot be killed or otherwise targeted during warfare. The Prophet Muhammad clearly did not want women to fight in battles, although they were permitted to distribute water and

provide medical aid to the wounded.¹⁷ Al-Waqadi's chronicle records that, for the Khaybar campaign, Muhammad allowed numerous women, including Umm Salama his wife¹⁸, to accompany the army after Umayya bint Qays ibn Ali-Salt-al-Ghifariyya requested that they be allowed to provide medical aid to the wounded. Muhammad permitted this with the words, "With Allah's blessing."¹⁹ During the Battle of Uhud, Umm 'Umara, one such female water carrier, had even found herself having to take up a weapon to protect Muhammad when the enemy swarmed upon him. She was badly wounded.²⁰ But this was clearly an exception to Muhammad's position that women would not fight. If they were present at all in or around the combat zone, it was to provide aid. It is worth pointing out that, even in today's international humanitarian law, it is permissible for civilians to provide medical aid to combatants, and that they do not lose their status as civilians, and the protections that accompany that status, by doing so.²¹

We know from chronicles that women sometimes fought in battles in pre-Islamic Arabia²², and we can find in the early prophetic biography that women occasionally did fight in enemy armies against the Muslims. For example, at the Battle of Uhud in 624 CE, one companion of the Prophet, Abu Dujana, killed with his sword a woman who was fighting among the men and inciting them "in a dreadful way."²³ Likewise, during the campaign against the Jewish Banu Qurayza tribe three years later, one enemy warrior called out to his wife Nubata to throw a rock down upon Muslims from the top of the fort. She did, killing a Muslim soldier named Khallad ibn Suwayd.²⁴ She was subsequently captured and executed, famously laughing

in her last moments as she blamed her husband for her death sentence.²⁵ Additionally, during the Islamic campaign against the Banu Hawazin in 630 CE, the Prophet Muhammad asked why a soldier had killed a woman prisoner, to which he received the reply that the woman had tried to kill him while riding behind him.²⁶ Muhammad considered this reasonable and merely ordered her burial. In all these cases, the women had surrendered what today we would call their civilian immunity. They would not have been killed had they not fought militarily or used violence themselves.

The Prophet Muhammad was equally opposed to women being killed outside of battle, as even his enemies recognised.²⁷ Indeed, we know from the Prophet's biography that, before sending commanders out on campaigns, he would direct them not to kill women. When he sent Abu Qatada to lead a raid on the Ghatafan tribe around Najd, for instance, he instructed him, "March by night and hide by day. Make an assault, but do not kill women and children."²⁸ Likewise, shortly before the Mu'tah campaign started, Muhammad issued fighting instructions to his warriors that included clear instructions not to kill women, children, people who did not oppose them but asked for protection, monks, and the elderly.²⁹

Many classical Islamic scholars trace the origin of this prohibition against killing women to a particular incident. On one campaign, Muhammad encountered the body of a slain woman and issued a ruling that neither women nor children were to be killed. Closely similar variations of this hadith are found in all six of the major Sunni hadith collections: *Sahih al-Bukhari*³⁰, *Sahih Muslim*³¹, *Sunan al-Sugbra*, *Sunan abu Dawud*, *Sunan al-Tirmithi*, and *Sunan ibn Majah*. Abu

Dawud's collection also contains a variation in which a cluster of people gathered around the body of the slain woman. The Prophet sent a man to ask what they were looking at. When he returned and reported the woman's slaying, the Prophet exclaimed that she should not have been fought. Khalid ibn al-Walid was in charge of the responsible unit, so the Prophet sent a messenger to advise Khalid "never to kill a woman or a hired servant".³² The version found in *Sunan ibn Majah* is almost identical, except that the Prophet, after learning of the woman's death, ordered Khalid not to kill "offspring or any hired servant".³³ In the textual commentary it explains that the word "offspring" (ذُرِّيَّةٌ) meant women.³⁴

In his *Kitab al-Maghazi*, al-Waqidi places this incident late in the Prophet's life; during the campaign against the Banu Hawazin in the Hunayn valley in 630 CE³⁵, but the fact that al-Waqidi himself mentions Muhammad's prohibition on killing women in war during several earlier campaigns, as mentioned above, works against this claim. It may indeed be that the Prophet reiterated his prohibition after seeing the dead woman on the way to Hunayn, but he had certainly issued the prohibition much earlier in his military career.

Even in the tumult of close-quarters combat, care was to be taken not to kill any women. During the house-to-house fighting in the Battle of Khaybar, for example, the Prophet Muhammad's prohibition was acted upon. In one crowded house—so small that swords hit the ceiling—a Muslim warrior almost killed a hysterical woman screaming in front of her husband, prompting several Muslims to engage with her, "but then we remembered that the Messenger of God had forbidden us from killing women."³⁶

This should not be understood that the unintended killing of women in such contexts was sinful or prohibited. *Sahih Bukhari* contains a hadith stating that, when asked hypothetically whether it was permissible to attack the enemy at night, even though this raised the probability of unintentionally killing women and children, Muhammad assented, adding that these unintended casualties might occur because of the close proximity (they are literally “هُمُ مِنْهُمْ”, “from them”).³⁷

It would be unfair to suggest here any callousness. In effect, Muhammad was merely stating a position known today in Just War theory as “double effect”. In other words, the permissibility rests on the moral justification that any deaths in such a case might be foreseen but are unintended. The information in the hadith is scanty, but it would not be unreasonable to suppose that Muhammad’s logic was similar to that of contemporary Just War theorists, who emphasise that any foreseen but unintended deaths must occur only on missions of great necessity and that every care is made to avoid causing such deaths. We know this to be the case because the Prophet’s default setting was that battles and raids should never occur at night. One of several *ahadith* affirming this states:

As Anas narrated, whenever Allah’s Messenger ﷺ attacked some people, he would never attack them until it was dawn. If he heard the Adhan [the call for prayer] he would delay fighting, and if he did not hear the Adhan, he would attack them immediately after dawn.³⁸

In 628 CE, for example, Muhammad marched his army at night to Khaybar, but only initiated the battle against the unsuspecting inhabitants after they arose at dawn.³⁹

CHILDREN

The prohibition on killing children rests on the same *ahadith* and relies on the same logic: that children, like women, are ordinarily incapable of threatening or inflicting harm, and are therefore not to take part in warfare. The minimum age to participate in combat is fifteen years, a constant feature of the Islamic laws of war that traces its roots back to the Prophet Muhammad's rejection of children younger than fifteen as warriors on his campaigns. Before departing for the Badr battle in 624 CE, he examined his warriors and sent all boys home to Medina.⁴⁰ One sixteen-year-old, 'Umayr ibn Abi Waqqas, pleaded to stay, despite the Prophet's concern that he was too young. Allowed to fight, he was the youngest to die in the battle.⁴¹ Before the Battle of Uhud, Muhammad once again screened out all boys younger than fifteen, allowing only two boys aged fifteen to fight in the battle after watching them wrestle each other.⁴² A year later, a fourteen-year-old boy, Ibn 'Umar, asked for permission to fight in the Battle of Uhud. Muhammad rejected his request, only letting him serve a year later during the Battle of the Trench, by which time he was fifteen.⁴³ According to some versions of this hadith, Ibn 'Umar's case established the demarcation between boys and men. Only fifteen-year-olds and above could perform any military service or draw payment for doing so.⁴⁴

It is logical that if a certain age is specified as being the minimum age allowed for fighting in war—that is, the age when a minor enters adulthood—then that same age will also define the age when a child loses the immunity that comes with childhood. In Islam that age for boys is fifteen. For girls the

issue is immaterial for the purposes of this study. Regardless of age, females are not to be attacked or even carelessly subjected to threat or danger.

There is one case in the Prophet's biography when male prisoners were killed, including some who—according to several books hostile to Islam—may or may not have been younger than fifteen. In 627 CE, the Prophet successfully besieged the fortresses of the Banu Qurayza, a Jewish tribe in Medina which had sided with the Quraysh tribe and its allies against Muhammad. Both Ibn Hisham's *Al-Sirah al-Nabi-wiyyah*⁴⁵ and *Al-Waqidi's Kitab al-Maghazi*⁴⁶ narrate a story found sketchily in the *ahadith*: that between 400 and 700⁴⁷ male Banu Qurayza prisoners were executed after capture, including any young-looking males (who were deemed to have passed puberty, according to one source, if they had pubic hair, or, according to a contradictory source, if they had started shaving their beards).⁴⁸ The historicity of this event has been debated, and we do not have any independent evidence of its actuality, such as archaeological evidence or Jewish sources.⁴⁹ Moreover, the sources themselves are vague and differ on the overall number of deaths and in particular on how many young males may have been teenagers (and of those how many, *if any*, were younger than fifteen). Certainly, assertions of many hundreds of prisoners being killed seem highly inconsistent with Al-Waqidi's own statement that "the prisoners were taken to the house of Usama ibn Zayd, and that the women and children to the house of the daughter of Al-Harith."⁵⁰ Given the small sizes of seventh-century Arabian houses it is unlikely that the death total could have been in the hundreds.

All we know is that, regarding war, the Islamic ruling emerged that boys younger than fifteen could not fight in wars and could not, logically, be killed in wars. Perhaps coincidentally, fifteen is the age limit also given for the protection of children during wartime in international humanitarian law. In *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, we find:

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest.⁵¹

SERVANTS AND ARTISANS

Women and children were not the only people to be considered exempt for deliberate harm during warfare. The

prohibition included other categories, such as servants, the elderly and the infirm. In the ahadith presented above relating to Muhammad seeing the slain woman, at which time he reiterated his prohibition on killing women, he stated that “hired servants” were also not to be killed. The words used were “*wa la 'aseefan*” (“وَلَا عَسِيفًا”), meaning “and not the hired servants [or employees]”. In this context, these “*usafa*” (عسفاء) were the paid servants who transported warriors’ possessions and weapons, and looked after the animals, but who took no role in the actual fighting.⁵² Given the explicit prohibition against killing these people in the *ahadith*, a ruling in Islam has emerged that, even if people are giving support to combatants, but are not themselves combatants, these people cannot be killed or otherwise targeted.⁵³ How far that applies in today’s world is unclear, given that factory workers producing weapons might be considered analogous to the “*usafa*” of the Prophet’s *ahadith*. Numerous modern scholars, including Muhammad Munir, Ahmed Mohsen Al-Dawoody and Mohamed Elewa Badar, see these *ahadith* as meaning that even modern-day factory workers, artisans and farmers should be included in those exempt from deliberate killing or harm during war.⁵⁴

THE ELDERLY

Elderly people were also afforded protection by the Prophet Muhammad, who made exceptions only for old men who chose to fight in combat and had therefore surrendered their right to protection. These, of course, included Muhammad himself, who was over sixty during his final

campaigns, and Abu Sufyan ibn Harb, his main protagonist, who was a decade older. Despite their age, they chose to fight as warriors and were therefore exempt from any protections based on age. It is the same in today's world. General George Smith Patton, the US Army's most renowned combat commander of World War II, was 59 when that conflict ended. During 1945 he faced General Gerd von Rundstedt, who commanded the German forces in Western Europe, aged 69. When US General Douglas MacArthur launched his famous Inchon campaign in 1950 he was already aged 70. All these men chose to serve in combat, knowing that they removed themselves from the protections ordinarily granted to the aged. In Muhammad's era, those who planned military operations, on or behind the combat zone, also withdrew themselves from that protection. We know of the case of Durayd ibn al-Sumamah, who was supposedly 160 years old when he planned military operations against the Muslim army during the Battle of Hunayn.⁵⁵ He may in fact have been any age from around eighty or upward. Killed by a Muslim warrior, he died with a heroism that Muslim chroniclers highlighted. Muhammad may have known about Durayd's killing, but we do not have a source confirming whether he spoke in favour of it or spoke against it. This had led some jurists to differ on its significance. Some, including al-Shirazi and al-Nawawi, believed that the Prophet's lack of condemnation reveals that it is permissible to target the elderly if they involve themselves in war planning.⁵⁶ Al-Shawkani, on the other hand, did not accept this logic and argued instead that there is nothing in Islamic sources to support the targeting of even elderly men involved in war planning.⁵⁷

Ordinarily, however, all other elderly were protected from harm by the Prophet's edicts, which stipulated, for instance, that the best jihad for "the elderly, the young, the weak, and women" is to perform either of the Islamic pilgrimages, the Umra or the Hajj.⁵⁸ Citing 'Abd al-Razzaq al-San'ani, the eighth century Persian scholar, Dawoody defines the aged who can no longer be targeted in war as "the one who looks to be in his old age or the one who reaches the age of fifty or fifty one years of age."⁵⁹

The Prophet Muhammad was categorical in his insistence that the aged be exempt from deliberate harm during war, and so was his immediate successor, Abu Bakr al-Siddiq 'Abdullah ibn Abi Quhafah, who famously issued to the Muslim army before a campaign against the Byzantine armies in Syria in 632 CE what have been called the "Ten Commandments" of Islamic warfare. There is a version in Imam Malik's seminal *Al-Muwatta'*⁶⁰, but the most common version is recorded in Al-Tabari's *Tarikh* (History). Issued as collective instructions to the army heading north to Syria under the leadership of Yazid ibn Abu Sufyan, these orders of Abu Bakr read as follows:

Oh people! Stop, and I will tell you ten things. Do not be treacherous; do not steal from the booty; do not engage in backstabbing. Do not mutilate; do not kill a youngster or an old man, or a woman; do not cut off the heads of the palm-trees or burn them; do not cut down the fruit trees; do not slaughter a sheep or a cow or a camel, except for food. You will pass by people [priests and/or monks] who devote their lives in

cloisters; leave them and their devotions alone. You will come upon people who bring you platters on which are all sorts of food; if you eat any of it, mention the name of Allah over it.⁶¹

Given that these so-called Ten Commandments were issued by Muhammad's closest companion within months of Muhammad's death, and the fact that Abu Bakr is not known ever to have departed from the teachings or course of action of his Prophet, we can fairly say that they represent Muhammad's views. These, then, are not merely the central military moral tenets of a caliph, but of a Prophet and therefore of a religion.

MONKS AND CLERGY

The explicit protection afforded to monks who had chosen seclusion in their monasteries is something that Muhammad had certainly articulated in his lifetime. Their desire to separate themselves from the world's affairs in order to contemplate the divine was something that he could relate to. After all, he had himself often withdrawn to a cave in order to be alone in prayer and worship and he had received his first revelation in a cave on what is now called the Mountain of Light (Jabal al-Noor). Throughout the years of revelation he also used to devote himself annually to extended periods of *i'tikaf* (اعتكاف) in the mosque; seclusion from worldly matters, and fasting, prayer and focused devotion to Allah.⁶²

The specific immunity from harm granted to the Christian clergy who devoted themselves to a monastic life has remained to the present day, but it has carried a caveat from the time

of Abu Bakr onwards. The immunity does not necessarily cover all clergy in all contexts. It covers those who are separated from worldly affairs and does not cover, for example, any priests who actively participate in the planning or conduct of warfare. Even Abu Bakr had supposedly permitted the killing of *al-shammasah* (الشمامسة, tonsured priests⁶³) if they supported armed resistance to the Muslim army.⁶⁴ In this sense, we see the same situation regarding clergy as we see for women. The Islamic default setting is that they are not to be killed, harmed or threatened, but if they place themselves in an enemy army and engage in the planning or conduct of war, they lose their right to immunity.⁶⁵

INFRASTRUCTURE AND CIVILIAN OBJECTS

Another noteworthy feature of Abu Bakr's famous Ten Commandments is his emphasis that the Islamic army must not do deliberate harm to the enemy community's means of supporting itself. Animals are not to be killed, unless for food, and the trees in the orchards are likewise to be left undamaged. This, of course, and the protection granted to monks, almost identically references the Prophet's instructions to the army he dispatched to Mu'ta in 629 CE:

Attack in the name of Allah, and fight His enemy and yours in Al-Sham. You will encounter men secluded in monasteries, withdrawn from others. Do not attack them. You will find other people seeking out Satan and sin. Draw your swords against them. Do not kill a woman or

a young child, or the old and senile. Do not destroy the date palm, cut down trees, or destroy a dwelling [بيتاً].⁶⁶

The Prophet's use of the word *beit* (بيت "dwelling" or "house") makes it clear that he intended for family homes to be left untouched. We also know how he felt about the need to protect not only homes, but also religious buildings. Allah had himself spoken in the Qur'an (*Surah al-Hajj* 22:40) about the evil of destroying religious buildings, including Jewish synagogues:

الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبُّنَا اللَّهُ وَلَوْلَا دَفْعُ اللَّهِ
النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفَدَّ مَتَّعْتُمْ صَوْمِعُ وَيَعِ صَلَوَاتُ وَمَسْجِدُ يُذَكَّرُ
فِيهَا اسْمُ اللَّهِ كَثِيرًا وَلَيَنْصُرَنَّ اللَّهُ مَنْ يَنْصُرُهُ ۗ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ
(الحج ٤٠)

[There are] those who have been evicted from their homes without right—only because they say, "Our Lord is Allah." And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might. (22:40)⁶⁷

Muhammad's protection of such buildings is significant and appears far earlier than similar prohibitions in the Western tradition, most of which began to appear in the

nineteenth and twentieth century. Abu Bakr's use of the word 'amara (عامر), as quoted in the *Muwatta* of Imam Malik, is even broader still, meaning any buildings, without functional specification.⁶⁸ It includes houses, artisans' workshops, storage buildings and so forth.

The second Caliph of Islam, 'Umar ibn al-Khattab, who assumed leadership of the Islamic policy following Abu Bakr's death in 634 CE, only two years after Muhammad's own death in 632, clearly understood that his Prophet wanted to spare critical infrastructure. When he travelled to Aelia Capitolina (Jerusalem) in 637 to accept in person the surrender of Sophronius the Patriarch, 'Umar made a pledge to Sophronius that identically mirrors the teachings of his Prophet, who felt respectful of the other monotheists in particular. The best-known version of 'Umar's pledge is found in Al-Tabari's *Tarikh*, which quotes 'Umar promising *inter alia*:

...safety [أمان] of their persons, property, churches, crosses ... that the churches would not be taken over or destroyed ... Neither they, nor the land upon which they stand, will be encroached upon or even partly seized.⁶⁹

Al-Tabari wrote his history three centuries after the Prophet's death, but 'Umar's pledge to Sophronius was mentioned in much earlier sources, including Al-Waqadi's *Futuh al-Sham*, and al-Tabari himself identifies his own source for the pledge as being a scholar who lived earlier.⁷⁰

Fortresses—strong structures designed for defensive warfare—are naturally different to buildings designed for civilian use. Just as the Laws of Armed Conflict today permit fortresses to be attacked, so long as advance warnings

are given⁷¹, Muhammad saw them as a legitimate target and besieged enemy fortresses on at least five occasions, including during the attack on the Banu Nadir. Structural damage to the Banu Nadir fortresses is even mentioned in the Qur'an, which states that, although they thought their fortresses (حُصُونُهُمْ) would protect them, they proved inadequate:

هُوَ الَّذِي أَخْرَجَ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِنَبِ مِنْ دِيَارِهِمْ لِأَوَّلِ الْحَشْرِ مَا
ظَنَّتُمْ أَنْ يَنْجُرُجُوا وُظَنُوا أَنَّهُمْ مَا نَعْتُمُ حُصُونَهُمْ مِنْ اللَّهِ فَأَنصَرُّهُمْ مِنْ
حَيْثُ لَمْ يَحْتَسِبُوا وَقَذَفَ فِي قُلُوبِهِمُ الرُّعْبَ يُجْرُونَ يُؤْتُهُمْ بِأَيْدِيهِمْ
وَأَيْدِي الْمُؤْمِنِينَ فَاعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ

(الحشر ٢)

It is He who expelled the disbelievers among the People of the Book from their dwellings at the first gathering. You did not think they would leave, and they thought that their fortresses would protect them from Allah; but Allah came upon them from where they had not expected, and He cast terror into their hearts [so] they destroyed their houses by their own hands and the hands of the believers. So take warning, O people of insight. (59:2)⁷²

The self-inflicted damage to their fortresses done by the Banu Nadir (“by their own hands”) refers to the fact that, when told they could leave their fortresses without being killed, so long as they agreed to vacate Medina along with all their transportable valuables and possessions, they chose to dismantle their own fortresses to remove expensive door

frames and so forth. They also damaged the building interiors to reduce their usability after their departure.⁷³

The early sources reveal that Muhammad used military subterfuge as a legitimate means of gaining positional or psychological advantage,⁷⁴ but there are no cases of Muhammad's armies besieging enemies without having declared war and offered terms. He even extended clemency upon request to unresisting individuals within enemy fortresses, who were allowed to leave despite their communities remaining defiant.⁷⁵ During the siege of Ta'if he offered safe passage to women and even manumitted any slaves who wanted to leave their masters' fortress.⁷⁶

Furthermore, in cities with fortresses such as Khaybar, the fortresses were fully inhabited only during wartime by citizens who ordinarily lived in small and indefensible houses round about. They took refuge in the fortresses only when the enemy was approaching. We can find no cases in the early Islamic sources of the empty houses being deliberately destroyed or otherwise harmed during sieges of the fortresses themselves. During the siege of Ta'if the Prophet only used the threat of a valuable vineyard being destroyed in order to coerce the besieged into stopping their rain of red hot metal down upon the Muslim catapult crews, who suffered terribly. When told of the huge economic value of the grapes, the Prophet ended his bluff and chose to leave the vines alone.⁷⁷

Anti-Muslim writers try to make much of a single incident that, they say, proves Muhammad destroyed infrastructure and thus established a permissive example for his followers to emulate. This is a gross oversimplification. During an attack on the Banu Nadir tribe in 625 CE, after its plan to assassinate

Muhammad emerged and they then refused to sign a peace treaty with him⁷⁸, he had besieged their fortresses and cut down or burned palm trees in an orchard called al-Buwaira⁷⁹, which resulted in a divine revelation now found in the Qur'an: "Whatever [of their] palm-trees you may have cut down or left standing on their roots, it was by Allah's permission so that He might disgrace the transgressors."⁸⁰ We are unsure why trees were cut down on this one occasion, whether for a strategic or purely punitive reason. The sources are silent regarding a purpose or motive.⁸¹ Perhaps the trees were hampering the assault or obscuring necessary visibility. If so, then the overriding concept of "military necessity" would certainly justify the trees' destruction. We know that Mawardi is wrong in claiming that the cutting of the trees was done to deny food to those inside the fortress because, as al-Waqadi points out, the Banu Nadir had enough food inside their forts to last a year.⁸² We know that not all the trees were destroyed anyway because the Qur'anic verse says that some were "left standing" and because the Prophet thereafter used their dates as a source of sustenance for his family.⁸³ Regardless of causation, after the accompanying Qur'anic revelation of permission on that occasion, Muhammad never again ordered such an act and, indeed, he thereafter expressly forbade it. Even when he faced elements of the Banu Nadir again during the Khaybar campaign three years later, in 628 CE, he did not cut down their trees.

It is also clear that Allah's permission for Muhammad, his Prophet, to cut down some of the trees on this one occasion does not form part of the Sunnah (meaning an example) that all Muslims are either obliged or permitted to follow. On several issues God gave Muhammad a unique dispensation from the

application of a rule binding on all others. For example, the Qur'an is categorical that all Muslim men may have no more than four wives simultaneously, yet the Prophet had as many as nine wives at one time. We should see the cutting of the trees in that one orchard in the same light. The Qur'an says that Allah gave Muhammad permission, yet Muhammad himself was clear that no one else can do it at other times. This was certainly Abu Bakr's understanding, because, as shown above, he also explicitly forbade such actions.

It would be anachronistic and incorrect to suggest that the rules on the protection of civilians' property articulated by the Prophet Muhammad match in every regard the laws on the safeguarding of civilian objects laid out in the Geneva Conventions of 1949 and Additional Protocols of 1977. It would be equally misleading to suggest that the laws, norms and practices of *any* statesman or state anywhere on earth *before the twentieth century* reached the standards required by the Geneva Conventions. It is true, furthermore, that not all warfare *since* the Geneva Conventions has reached it. There are innumerable examples even from recent decades of the wanton destruction of civilian infrastructure and other objects and property.

The "basic rule" given by Additional Protocol I of 1977 states:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall

direct their operations only against military objectives.⁸⁴

Article 50(3) of the same Protocol directs that even the presence in, or close proximity of, enemy forces to a civilian population and the infrastructure, dwellings, transport systems, land and so forth that supports that community “does not deprive the civilian population of its civilian character”. In other words, those things cannot be targeted or otherwise damaged without due care merely because the enemy is positioned there or nearby.

It is my view as a historian of wars, laws and ethics that, in many ways, the warfighting undertaken by the Prophet Muhammad, and the constraints he articulated on the use of force, do in fact closely match aforementioned standard. The fact that he explicitly forbade the destruction of any dwelling and date and fruit tree testifies to his desire that innocent people should not have their lives and livelihoods turned upside down or rendered non-functional. With the exception of the case of the Banu Nadir, which involved the unexplained burning of some trees but not others in one particular orchard among others, the early Islamic narratives and the *ahadith* reveal no examples at all of wanton civilian infrastructural destruction but do contain several examples of prohibitions against the deliberate destruction of civilian objects. We certainly cannot find evidence that Muslim armies during Muhammad’s lifetime ever destroyed whole cities, agricultural fields and farm animals, as we know the biblical Hebrews did during the conquests of Midian, Canaan, and other areas (in which, on occasion, they deliberately killed every man, woman and child⁸⁵). Similarly, we cannot find evidence that Muslim

armies ever salted fields, slaughtered animals and much worse, as we know the Romans did. “It is a wonderful sight,” Roman commander Scipio Aemilianus Africanus gushed in 146 BCE as he watched his forces raze the enemy city of Carthage to the ground following his order that no trace of it should remain. “Yet I feel a terror and dread lest someone should one day give the same order about my own native city.”⁸⁶

PRISONERS OF WAR

In today’s ethical framework, warriors are prohibited from killing or mistreating people who might otherwise be considered combatants, but who, because of wounding or capture, are at the time of encounter considered “*hors de combat*,” that is, “taken out of the fight”. No longer considered a threat, they are therefore extended rights and protections akin to those given to civilians.⁸⁷ Article 3(1) of the 1949 Geneva Conventions states:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely ... To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.⁸⁸

The Prophet Muhammad understood warfare in strikingly

similar terms. How could he not? The Qur'anic revelation forbade the slaughter of prisoners of war. In verse 4 of *Surah Muhammad*, which Islam's enemies frequently cite as evidence of barbarism because it talks about striking at necks, we actually find the opposite:

فَإِذَا لَقِيَهُ الَّذِينَ كَفَرُوا فَضْرِبَ الرِّقَابِ حَتَّىٰ إِذَا أَخْتَمْتَهُمْ فَشُدُّوا الْوَتَاقَ
 فَمَا مَتًّا بَعْدَ وَا مَّا فِدَاءً حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا ذَلِكَ وَلَوْ يَشَاءُ اللَّهُ
 لَآتَصَّرَ مِنْهُمْ وَلَٰكِن لِّيَلْبُوا بَعْضَكُمْ بَعْضٌ وَالَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ
 فَلَنْ يُضِلَّ أَعْمَلَهُمْ

(محمد ٤)

So when ye meet [in combat] those who disbelieve, you can strike at their necks until, when you have subdued them, you can bind them [as prisoners of war], and [for them] afterward shall be either magnanimity or ransom until the burdens of the war are over. That is it. And if Allah had willed He could have punished them, but [thus it is] that He may test some of you by means of others. And those who are slain in the way of Allah, will not lose their good deeds. (47:4)⁸⁹

In *Surah al-Anfal* 8:12 the Qur'an likewise commands soldiers in battle to strike at necks and fingers. Although these verses may seem out of place in a religious text, they are not out of place within advice given by a military commander before a battle. That *was* precisely the context of those particular revelations. Muhammad's community had not yet fought a

battle or formed an army and those Muslims who were about to become warriors needed to be taught how to kill immediately and humanely. Decapitation, as opposed to wild slashes at limbs or armoured bodies, ensured humane killing instead of ineffective and brutal wounding. Even better, if a soldier could make an enemy drop his weapon by striking at his hands, he might be able to take him prisoner. Having him alive as a captive who could later be freed, even with a wounded hand, was preferable to leaving him as a corpse.

Today all military or security forces in the world teach weapon-handling skills with the same focus. Recruits and officer cadets are taught how to kill or wound on firing ranges where instructors teach them which target areas will bring humane death and which ones will cause someone's incapacitation without death. The two Qur'anic passages mentioned above should be read in that light. Moreover, they do not represent an instruction to all Muslims anytime to kill or wound all non-Muslims anywhere. That would violate every concept of justice embedded within Islam. The instructions were to one group of Muslims who had not yet experienced combat in anticipation of a specific conflict: the Battle of Badr fought in March 624 CE.

More importantly for the purposes of this study, we have a Qur'anic revelation transmitted through Muhammad that Muslims were *not* to kill their prisoners of war, now that they were *hors de combat*, that is, out of the fight. We know from the earliest sources that seventy prisoners were indeed taken at the Battle of Badr and that, except for two men who were executed for prior criminality unrelated to the battle, all the prisoners' lives were spared.⁹⁰

This was an entirely novel situation; the first time that Muslims had captured large numbers of prisoners. According to Al-Waqidi, supported by *abadith*,⁹¹ Muhammad sought advice on how they should be treated. Abu Bakr favoured magnanimous release or earned freedom via payment of ransom. This, of course, seemed to be in perfect agreement with the permission given in the divine revelation. It was also consistent with what Muhammad had pledged in the constitution of Medina, which had stated that every constituent tribe would “parole prisoners with the kindness and justice common among believers.” (“يدفون عانيهم بالمعروف والقسط بين”) (“المؤمنين.”)⁹²

Others disagreed. 'Umar favoured the pre-Islamic Arabic way of treating captives: execution. Muhammad listened several times to both before asking for counsel from others in his inner circle. He then made his decision: the prisoners would be ransomed, perhaps in order to offset the cost of the campaign and serve as a source of income. That is, the prisoners could buy their freedom or a relative could do so.⁹³ The Prophet instituted an easy and flexible ransom scheme, whereby the freedom of rich people would cost more than that of the poor. The poorest would pay nothing at all. Zaynab, the Prophet's own daughter, bought the freedom of her husband Abul-'As with the offer of a necklace that had belonged to the Prophet's beloved first wife Khadija. Learning of this, the deeply-moved Prophet had the necklace returned and freed Abul-'As upon his promise that Zaynab could come to him in Medina.⁹⁴

Within a day of initiating this activity, another revelation appeared to Muhammad, with a rebuke that brought distress. Allah had deemed it unfitting that a Prophet should take pris-

oners, although Muhammad and the Muslims could not be condemned because they had acted in accordance with the known revelation:

مَا كَانَ لِنَبِيٍّ أَنْ يَكُونَ لَهُ أَسْرَىٰ حَتَّىٰ يُخْرِجَ فِي الْأَرْضِ تُرِيدُونَ عَرَضَ
 الدُّنْيَا وَاللَّهُ يُرِيدُ الْآخِرَةَ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٦٧﴾ لَوْلَا كِتَابٌ مِّنَ
 اللَّهِ سَبَقَ لَمَسَّكُمْ فِيمَا أَخَذْتُمْ عَذَابٌ عَظِيمٌ
 (الأنفال ٦٧-٦٨)

It is not fitting for a prophet that he should have prisoners of war until he has subdued the land. You desire the temporal goods of this world; but Allah looks to the Hereafter: And Allah is almighty [and] all-knowing. (8:67) Had it not been for a previous ordainment from Allah, a severe penalty would have reached you for what you took [the ransom]. (8:68)⁹⁵

Exegetes are divided over the meaning of this new revelation.⁹⁶ The hawks among them have always interpreted this to mean that prisoners should, or at least could, be killed. The doves among them have interpreted it to mean merely that it is unfitting for a Prophet to benefit financially from prisoners; they should be released without ransom. There is another view, which seems to sit in the middle: that it was perfectly acceptable for prisoners to be ransomed, so long as Muhammad himself did not do this. In other words, when he was present as leader (قائد) on the battlefield (as opposed to someone else serving as leader), prisoners should be freed without ransom.

The ambiguity has negatively impacted on Islamic jurisprudence on this issue throughout the last fourteen hundred years, with scholars of different schools or factions favouring particular views over other. We see groups such as ISIS adopting the first interpretation, killing prisoners without mercy. I do not intend to become engrossed in the debate. To me the issue is easier to resolve by asking one fundamental question: After Badr, when they were released via either pardons or ransom, how did Muhammad deal with prisoners?

The best start point is verse 70 of the same surah:

يَا أَيُّهَا النَّبِيُّ قُلْ لِمَنْ فِي أَيْدِيكُمْ مِنَ الْأَسْرَىٰ إِن يَعْلَمِ اللَّهُ فِي قُلُوبِكُمْ
خَيْرًا يُؤْتِكُمْ خَيْرًا مِّمَّا أُخِذَ مِنْكُمْ وَيَغْفِرَ لَكُمْ وَاللَّهُ غَفُورٌ رَحِيمٌ
(الأنفال ٧٠)

O Prophet! Say unto the captives who are in your hands: If Allah knows any good in your hearts, He will give you better than what was taken from you, and will forgive you. Allah is forgiving and most-merciful. (8:70)

We clearly see here the transmission of divine clemency. Captives could be freed and forgiven so long as they promised to step back from further warfare against the Muslim polity. Should they maintain antipathy towards the Islamic polity and desire to continue fighting, they might do well to remember—as they following ayah says—that Allah has given Muhammad and the Muslims “power over them” (“فَأَمَّا كُنْ مِنْهُمْ”).⁹⁷ We know from the early Islamic chronicles of the example of Abu ’Azzah ’Amr ibn ’Abdullah ibn ’Umayr al-Jumahi, a Quraysh fighter captured at the Battle of Uhud, who was executed for having

broken his personal word to Muhammad when freed without parole at Badr that he would not fight Muslims again.⁹⁸ When he appealed for clemency a second time, the Prophet declined, explaining that he had broken his trust. “Indeed a believer will not be bitten twice from the same snake hole.”⁹⁹

Making sense of the aforementioned fate of the Banu Qurayza is not easy, especially given that their reported execution seems inconsistent with how the other Jewish tribes had been treated both before and after this event occurred. For example, we know from the earliest extant chronicles that the Banu Nadir had been exiled from Medina for treachery in 625 CE without any executions and that they migrated north, some to Khaybar and others all the way to Syria. When the Muslim army captured those who had moved to Khaybar and were urging continued resistance there in 628 CE, they were again not executed even for their *second* case of treachery. They were freed and allowed to remain in Khaybar so long as they paid to the Islamic polity the precise amount of crops that they had secretly offered to the Ghatafan tribe to join with them in a war against the Muslims.

Thus, explaining the reports of the execution of an unverifiable number of adult male Banu Qurayza prisoners in between these two events involves a complicated argument that a) either they were not executed; b) some were executed and others not; c) that they were executed, but not as a requirement of Islamic law or Muhammad’s choice. It is hard to argue against early Islamic sources which state that executions occurred, despite the fragmentary and partially contradictory nature of their narratives and the total lack of any other sources, such as Jewish accounts or archaeological evidence. So we are left with

the traditional Islamic narrative found in the early sources, which is the only explanation that might make any sense: that the Jewish prisoners and the Prophet Muhammad both agreed to abide by a ruling which would be created independently and delivered by a third-party mediator. The Banu Aws tribe, the Banu Qurayza's allies, themselves provided the mediator, Sa'd ibn Mu'adh, a decision accepted by Muhammad, who promised to accept Sa'd's ruling.¹⁰⁰ Sa'd chose to impose upon the captured Jews the fate decreed for such prisoners in the Torah, the Jews' own holy book: execution.¹⁰¹

This would legitimately remove from Muhammad and the Islamic polity responsibility for the Banu Qurayza deaths, meaning that, aside from three individuals executed for other unrelated reasons and not for their participation in combat, there are *no* known cases of prisoners being executed by Muslims during the Prophet's lifetime on his or any other authorised Muslim leader's instructions.

We also know that the Prophet wanted prisoners to be treated well, as he told his companions when assigning them to the companions' care in Medina: "Observe good treatment towards the prisoners."¹⁰² He insisted, for example, that they be properly clothed¹⁰³ and adequately fed.¹⁰⁴ Al-Waqidi even reports a case of prisoners marvelling that their Muslim captors let them ride camels while they walked beside them.¹⁰⁵ Expressly forbidding any torture or mutilation, Muhammad stated in unequivocal terms: "I will not mutilate ... for Allah would then mutilate me even though I am a prophet."¹⁰⁶ Interestingly, he made this much-quoted statement first, to our knowledge, when 'Umar asked to be allowed to pull out the teeth of Suhayl ibn 'Amr, a Quraysh leader and distinguished

orator who had long agitated against Muhammad. Rejecting 'Umar's request, Muhammad said that perhaps one day Suhayl would have a change of heart about Islam. This actually transpired. When Muhammad marched upon Mecca in 630 CE in a bloodless campaign, Suhayl was the one who requested, and received, clemency on behalf of all Meccans from Muhammad, who quoted from the Torah about the forgiveness given by the Prophet Joseph to his brothers. Suhayl soon after converted to Islam.¹⁰⁷ When the Prophet died in 632, it was Suhayl who gave a rousing speech that prevented the wavering Meccans from opposing the continued rule of Islam.¹⁰⁸

Muhammad strongly disliked seeing people in bondage and, rather than killing people after defeating them in battle, preferred to free them in return for treaties which he hoped would prevent further hostilities. After the Battle of Khaybar, for instance, he had showed similar mercy to the Jews, freeing them upon a pledge of good conduct and an agreement to pay the same tribute that they had earlier duplicitously promised to the powerful Banu Ghatafan. Despite having been betrayed twice by the Banu Nadir, Muhammad let them remain in Khaybar and married Safiyya, the widowed daughter of Huyay ibn Akhtab, the Banu Nadir's slain chief, apparently in order to repair damaged relations.¹⁰⁹ After hearing about the settlement with Khaybar, the people of the nearby prosperous orchard-oasis of Fadak, allied with Khaybar, sent Muhayyisa ibn Mas'ud to Muhammad in order to negotiate a similar accord, asking to be treated leniently in return for surrender. Muhammad agreed, and made no attack.¹¹⁰

Muhammad's marriage to Safiyya is reminiscent of his equally "political" marriage to Juwayriyya bint al-Harith bin

Abi Dari, the daughter of the chief of the Banu al-Mustaliq, whom Muhammad married after the defeat of her tribe in 627 CE. Now as a kinsman by marriage, Muhammad was able to free from bondage all the captives: one hundred families.¹¹¹ The Banu al-Mustaliq promptly joined the Islamic polity.

Even more mercifully, when he advanced upon Mecca in 630 CE at the head of an army of 10,000, he captured the city in a bloodless invasion and promptly pardoned its leaders and citizens, despite their eight years of fighting against him and even more years of persecution. When its frightened inhabitants asked for mercy, he granted it, quoting the Prophet Joseph, who had forgiven his eleven brothers for throwing him down a well and leaving him for dead. In words attributed to Joseph, which are now memorialised in a Qur'anic revelation as *Surah Yusuf* 12:92, Muhammad told all Meccans:

قَالَ لَا تَثْرِيبَ عَلَيْكُمُ الْيَوْمَ يَغْفِرُ اللَّهُ لَكُمْ وَهُوَ أَرْحَمُ الرَّاحِمِينَ

(يوسف ٩٢)

He said, 'There shall be no reproach upon you this day. God will forgive you, for He is the most merciful to those who show mercy.' (12:92)¹¹²

Likewise, when shortly after the opening of Mecca he took vast numbers of prisoners and war spoils at Hunayn—6,000 women and children, 24,000 camels and 40,000 cattle—Muhammad negotiated with the defeated and now Muslim commander, Malik bin 'Awf An-Nasri, who let him keep the animals, and freed all the prisoners (whom he first clothed in better garments than they were captured wearing) without requiring the payment of ransom.¹¹³ In fact, Muhammad compensated out of the public treasury all of his warriors who

felt unwilling to release slaves (still seen by them as a major form of booty). Muhammad's own profit from the Hunayn campaign went for good causes, as the Qur'an reveals in *Surah Tawbah* 9:60:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمَوْلَاتِ فُلُوبِهِمْ وَفِي
الرِّقَابِ وَالْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ
عَلِيمٌ حَكِيمٌ
(التوبة ٦٠)

The alms are only for the poor and the needy, and those who collect them, and those whose hearts are [now] reconciled, and to free the captives and the debtors, and for the cause of Allah, and [for] the wayfarer; a duty imposed by Allah. Allah is the Knower [and] the Wise. (9:60)¹¹⁴

The phrase “to free the captives” (lit. to free “the necks”) relates explicitly to the release of the prisoners of war. The Arabic word for slaves (عبيد) is not used. We find a similar verse in *Surah Al-Insan* 76:8, which summarizes Islamic piety in this fashion:

وَيُطْعَمُونَ الطَّعَامَ عَلَىٰ حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا
(الإنسان ٨)

And for the love of Allah they feed the indigent, the orphan, and the captive. (76:8)¹¹⁵

The fact that slavery existed in seventh-century Arabia—and as it did almost everywhere until recent centuries—and was

not explicitly forbidden by either Qur'anic revelation or by Muhammad himself should not be seen as evidence that it was a desired institution. Accepting a similar logic would require us also to believe that Jesus desired slavery, because he also did not explicitly condemn it or demand the freeing of slaves. Indeed, Paul the Apostle, the most significant Christian expositor of Jesus's teaching, merely told slaves to submit to their masters.¹¹⁶ We *do* know, on the other hand, of Muhammad's preference for Muslims to free any slaves, including any captives taken in war and not freed via pardon or parole. He died having manumitted all the slaves assigned to his care in recent battles.¹¹⁷

The Qur'an itself speaks twenty-nine times of "what the right hand possesses" ("ما ملكت أيمانكم"), which might be either male or female slaves. It is clear that their humanity raises them above being chattel property and exhorts kind treatment and ideally their manumission. We have a hadith, for example, in which the Prophet is asked which type of slave is the best to free. Proving that being humane and selfless was more important than acquiring property or wealth, he replied: "The most expensive and the most valuable to his master."¹¹⁸

Anti-Islamic writers, pundits and propagandists complain that female war captives became slaves and were subject to sexual violation and rape. This is a gross error. *Surah al-Noor* 24:3 makes clear that female slaves cannot be exploited or used for "whoredom" and encourages believers to facilitate their manumission should the slave initiate the legal process and have funds. Ordinarily the purpose of keeping any female war captives was to provide for them if their husbands had been slain, and most became married to the man to whom they

were assigned. In terms of the Prophet's own example—the “Sunnah” that Muslims should follow—we have no evidence that he ever had sexual relations with a war captive except for those whom had he already freed *and married* (Juwayriyya and Safiyya, who were not coerced into marriage).

The sources only mention women being taken captive on four occasions—the campaigns against the Banu Qurayza, Hawanzinites, Banu al-Mustaliq and Banu al-Anbar tribes—and in three of the four cases all the women were freed and returned, aside from those who chose without coercion or fear to convert to Islam and/or marry Muslim men. Most of these tribes embraced Islam anyway. The exception seems to be the Banu Qurayza women, who, having lost their men following the binding judgement of Sa'd ibn Mu'adh, remained within the Muslim polity.

The scurrilous and deviant maltreatment of female captives by Boko Haram, ISIS and other Jihadist groups not only violates international law, but entirely violates the Qur'anic and prophetic wisdom, and rests upon the miscreants' cunning twisting of Qur'anic verses and *ahadith* referring not to war captives, but to household concubines. One can only wonder what they would make of this hadith: “The Prophet, may Allah's peace and blessings be upon him, said, ‘He who has a slave-girl and teaches her good etiquette and improves her education and then manumits and marries her, will get a double reward; and any slave who observes Allah's right and his master's right will get a double reward.’”¹¹⁹

CONCLUSIONS

This study has analysed the Qur'anic revelation and the preaching and practices of Muhammad in order to ascertain what Islam in its initial manifestation taught regarding the responsibilities of Islamic armies and warriors towards the people that we nowadays call civilians and other non-combatants. It is clear that Muhammad ushered in an era of humanity exceeding that found previously in Arabia and indeed virtually anywhere in the world.

Muhammad did not intend war and its ravages to involve whole communities, but, rather, only the combatants, whose aggression and willingness to take up arms made them culpable and subject to armed resistance. Understanding that Allah permitted self-defence against attack, he directed warfare to the attackers, but not to their women, children and elderly. Indeed, he forbade their deliberate targeting, unless they surrendered their rights to protection by taking part in combat. Consistent with modern international humanitarian law, he mandated that all males younger than fifteen were to be excluded from warfare. Because these categories of people, and their servants and slaves, and the artisans and farmers who supported them, were not fighting, they were not to be fought. Ensuring that they were not caught up in close-quarters fighting in darkness, he fought all his battles during daylight.

Extending this right to protection to the monks and other clergy who devoted themselves to religious practices, and then even to the kinds of property that we now call civilian infrastructure, Muhammad created a widespread environment of safety that protected the lives and way of life of most

people even in warring communities. In terms of infrastructural harm, we can only find as an exception one case of intentional damage, which involved the inadequately explained burning of some trees but not others in one particular orchard among other untouched orchards. Aside from this, the early Islamic narratives and the *ahadith* reveal no examples at all of wanton civilian infrastructural destruction but do contain several examples of explicit prohibitions against the deliberate destruction of houses, buildings, churches, crops, trees, farm animals and other things now called “civilian objects”.

As a new notion in Arabia, Muhammad chose not to slaughter the defeated or captured warriors, but to find ways of securing their release, either through parole/ransom or magnanimous pardons accompanying promises that those freed warriors would never resume fighting. Reconciliation with the Islamic polity was his aim. Humanity was his practice. He therefore ensured that prisoners were well cared for and not tortured or abused.

Again, the sources do reveal one exception—that of the Banu Qurayza—yet the killing of these prisoners was not undertaken as an Islamic initiative or on Muhammad’s order, but on the direction of a third-party mediator whose decision both parties had solemnly sworn to accept. In any event, the sources are greatly contradictory on the numbers killed, with the lowest figure found in the sources being under half that of the highest figure. The absence of any non-Islamic sources leaves us unable to say much more than this.

Popular misconceptions fuelled by Al-Qaeda, ISIS, Boko Haram and other violent extremist groups are not based on an unbiased reading of the historical evidence. That evidence

tells a totally different story: of a close compatibility between the early Islamic practices under the Prophet Muhammad's direction and the ethical code of civilian immunity embedded within western Just War theory and international humanitarian law. Aside from the combatants, Muslims were not to kill or otherwise harm the innocent and they were not to destroy their homes, infrastructure or means of survival.



ENDNOTES

- 1 Muslims make up 23 percent of the world's 6.9 billion humans. See the Pew Forum on Religion & Public Life, *The Future of World Religions: Population Growth Projections, 2010-2050* (Washington, DC: Pew Research Center, 2 April 2015), p. 7. Cf.: http://assets.pewresearch.org/wp-content/uploads/sites/11/2015/03/PF_15.04.02_ProjectionsFullReport.pdf
- 2 The very first word revealed to Muhammad was “*Iqra*,” (اِقْرَأْ), which means “recite” and the word Qur’an itself originates from the root word *Qara’a*, which means “to read out” or “to recite”.
- 3 Joel Hayward, *Warfare in the Qur’an* (Amman: Royal Islamic Strategic Studies Centre / Royal Aal al-Bayt Institute for Islamic Thought, 2012).
- 4 This is certainly the view of the influential eighth-century biographer, Ibn Ishaq, as revised by Ibn Hisham: Ibn Hisham, *As-Sirah an-Nabawiyyah* (Beirut: Maktaba Allasrya, 2012). For modern writers who agree, see: Fatoohi, *Jihad in the Qur’an*, p. 31; Zakaria Bashier, *War and Peace in the Life of the Prophet Muhammad* (Markfield: The Islamic Foundation, 2006), pp. 2-4; Martin Lings, *Muhammad: His Life based on the Earliest Sources* (London: George Allen & Unwin, 1983. Islamic Texts Society edition, 2009), p. 135; Safiur Rahman Mubarakpuri, *The Sealed Nectar*, p. 183; Sohail H. Hashmi, “Sunni Islam,” in Gabriel Palmer-Fernandez, ed., *Encyclopedia of Religion and War* (London: Routledge,

2004), p. 217. Sohail H. Hashmi, ed., *Islamic Political Ethics: Civil Society, Pluralism, and Conflict* (Princeton: Princeton University Press, 2002), p. 198.

5 *Surah al-Hajj* 22:40.

6 Cf. Michael Lecker, *The Constitution of Medina: Muhammad's First Legal Document* (Princeton, NJ: Darwin, 2004).

7 *Sunan an-Nasa'i* (Riyadh: Darussalam, 1999 edition), p. 423, hadith 3087:

أَخْبَرَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ بْنِ سَلَامٍ، قَالَ حَدَّثَنَا إِسْحَاقُ الْأَزْرَقِيُّ، قَالَ حَدَّثَنَا سُفْيَانُ، عَنِ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنِ ابْنِ عَبَّاسٍ، قَالَ لَمَّا أُخْرِجَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ مَكَّةَ قَالَ أَبُو بَكْرٍ أَخْرَجُوا نَبِيَّهُمْ إِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ لِيَهْلِكَنَّ . فَزَلَّتْ ﴿ أذنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ ﴾ فَعَرَفْتُ أَنَّهُ سَيَكُونُ قِتَالٌ . قَالَ ابْنُ عَبَّاسٍ فَهِيَ أَوَّلُ آيَةٍ تَزَلَّتْ فِي الْقِتَالِ .

8 *Surah al-Baqarah* 2:190.

Cf. *Sunan al-Tirmidhi* (Cairo: Dar al-Hadith, 1999), Vol. 5, p. 170, hadith 3172:

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، حَدَّثَنَا أَبُو أَحْمَدَ الرَّزَيْنِيُّ، حَدَّثَنَا سُفْيَانُ، عَنِ الْأَعْمَشِ، عَنْ مُسْلِمِ بْنِ أَبِي بَكْرٍ، قَالَ لَمَّا أُخْرِجَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ مَكَّةَ قَالَ رَجُلٌ أَخْرَجُوا نَبِيَّهُمْ فَزَلَّتْ: ﴿ أذنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ ﴾ * الَّذِينَ أَخْرَجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقِّ ﴿ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَصْحَابُهُ .

9 Cf. Louay Fatoohi's thorough analysis of abrogation: *Abrogation in the Qur'an and Islamic Law: A Critical Study of the Concept of Naskh and its Impact* (Kuala Lumpur: Islamic Book Trust ed., 2013. First published by

Routledge in New York and Oxon, 2013).

10 Muhammad al-Ṭahir ibn 'Ashur, *Tafsir al-Tabrir wa'l-Tanwir* (Tunis: Dar Sahnun, tenth edition, 2010), Volume 1, p. 200; Abu Ja'far Muḥammad ibn Jarir al-Ṭabari, *Tafsir al-Tabari* (Cairo: Dar al-Hadith, 2010 edition), Volume 2, pp. 173-175.

11 Hayward, *Warfare in the Qur'an*, pp. 20-28.

12 *Tafsir al-Tabari*, Volume 2, pp. 174-175:

عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا
إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ يَقُولُ لَا تَقْتُلُوا النِّسَاءَ وَلَا الصِّبْيَانَ وَلَا الشَّيْخَ الْكَبِيرَ
وَلَا مَنْ آتَى إِلَيْكُمْ السَّلَامَ وَكَفَّ يَدَهُ فَإِنْ فَعَلْتُمْ هَذَا فَقَدْ اعْتَدَيْتُمْ.

13 *Tafsir al-Tabari*, Volume 2, p. 174:

“Yahya ibn Yahya Al-Ghasani reported: I wrote to Umar ibn Abdul Aziz and I asked him about the verse, ‘Fight in the way of Allāh those who fight you, but do not transgress’ [2:190]. ‘Umar wrote back to me, saying, ‘This refers to women, children, and whoever among them is not waging war against you.’”

عَنْ يَحْيَى بْنِ يَحْيَى الْغَسَّانِيِّ قَالَ كَتَبْتُ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَسْأَلُهُ عَنْ قَوْلِهِ وَقَاتِلُوا
فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ قَالَ فَكَتَبَ إِلَيَّ
إِنَّ ذَلِكَ فِي النِّسَاءِ وَالذَّرِيَّةِ وَمَنْ لَمْ يَنْصَبْ لَكَ الْحَرْبَ مِنْهُمْ.

14 Cf. Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins University Press, 2010 reprint edition), p. 47; Sadia Tabassum, “Combatants, not Bandits: the Status of Rebels in Islamic law”, *International Review of the Red Cross*, Volume 93, Number 881 (March

2011), p. 8. Online version at:

<https://www.icrc.org/spa/assets/files/review/2011/irrc-881-tabassum.pdf>

- 15 Muhammad ibn al-Hasan al-Shaybani, *Kitab al-Siyar al-Kabir* (Beirut: Dar al-Kutub al-'Ilmiyyah), Volume 4, p. 186.
- 16 Osama bin Laden, fatwah urging jihad against Americans, published in *Al-Quds al-'Arabi* on 23 February 1998. Online version at:
<http://www.mideastweb.org/osamabinladen1.htm>
- 17 *Sunan al-Tirmidhi*, Vol. 3, p. 531, hadith 1556:

حَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا حَازِمُ بْنُ إِسْمَاعِيلَ، عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ يَزِيدَ بْنِ هُرْمَةَ، أَنَّ جَدَّةَ الْحُرُورِيِّ، كَتَبَتْ إِلَى ابْنِ عَبَّاسٍ يَسْأَلُهُ هَلْ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَغْرُو بِالنِّسَاءِ وَهَلْ كَانَ يَضْرِبُ لَهُنَّ بِسَهْمٍ فَكَتَبَ إِلَيْهِ ابْنُ عَبَّاسٍ كَتَبْتُ إِلَيْكَ تَسْأَلُنِي هَلْ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَغْرُو بِالنِّسَاءِ وَكَانَ يَغْرُو بِهِنَّ فَيُدَاوِينَ الْمَرْضَى وَيُحْدِثْنَ مِنَ الْغَنِيمَةِ وَأَمَّا يُسْهِمُ فَلَمْ يَضْرِبْ لَهُنَّ بِسَهْمٍ . وَفِي الْبَابِ عَنْ أَنَسٍ وَأُمِّ عَطِيَّةَ .

Cf. *Sahih al-Bukhari* (Cairo: Dar Al-Afaq al-Arabia, 2004), pp. 581-582, hadith 2882:

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا جَعْفَرُ بْنُ سُلَيْمَانَ، عَنْ ثَابِتٍ، عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَغْرُو بِأُمَّ سَلَمَةَ وَنِسْوَةٍ مِنَ الْأَنْصَارِ مَعَهُ إِذَا غَرَا فَيَسْقِيَنَّ الْمَاءَ وَيُدَاوِينَ الْجَرْحَى .

- 18 Muhammad ibn 'Umar-al-Waqidi, *Kitab al-Maghazi* (Beirut: Muassassat al-'Alami, 1989), Vol. 2, p. 709.
- 19 Ibid, Vol. 2, p. 685.

- 20 Ibn Hisham, p. 755.
- 21 Article 17 in *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.
- 22 Khadduri, *War and Peace in the Law of Islam*, p. 85.
- 23 Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, p. 259.
- 24 Ibid., Vol. 2, pp. 516-517.
- 25 Ibid., Vol. 2, p. 517.
- 26 Ibid., Vol. 3, p. 912.
- 27 Ibid., Vol. 3, p. 516.
- 28 Ibid., Vol. 2, p. 778.
- 29 Ibid., Vol. 2, p. 758.
- 30 *Sahih al-Bukhari*, p. 605, hadith 3014:

Narrated 'Abdullah: During a campaign of Allāh's Messenger ﷺ a woman was found killed. Allāh's Messenger ﷺ disapproved the killing of women and children.

حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، أَخْبَرَنَا اللَّيْثُ، عَنْ نَافِعٍ، أَنَّ عَبْدَ اللَّهِ - رَضِيَ اللَّهُ عَنْهُ - أَخْبَرَهُ أَنَّ امْرَأَةً وُجِدَتْ فِي بَعْضِ مَغَازِي النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَقْتُولَةً، فَأَنْكَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَتْلَ النِّسَاءِ وَالصِّبْيَانِ.

Sahih al-Bukhari, p. 605, hadith 3015:

Narrated Ibn 'Umar: During a campaign of Allāh's Messenger ﷺ a woman was found killed. Allāh's Messenger ﷺ forbade the killing of women and children.

حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبرَاهِيمَ، قَالَ قُلْتُ لِأَبِي أُسَامَةَ حَدَّثَكُمْ عَيْدُ اللَّهِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ وُجِدَتْ امْرَأَةٌ مَقْتُولَةً فِي بَعْضِ مَغَازِي

رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَنَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ قَتْلِ
النِّسَاءِ وَالصِّبْيَانِ.

31 *Sahih Muslim* (Cairo: Dar Al-Ghad Al-Gadid, 2007, p. 637), hadith 1744a:

It is narrated on the authority of 'Abdullah that a woman was found killed in one of the battles fought by the Messenger of Allāh ﷺ. He disapproved of the killing of women and children.

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَمُحَمَّدُ بْنُ رُجْحٍ، قَالَ أَخْبَرَنَا اللَّيْثُ، وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ
حَدَّثَنَا لَيْثٌ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ، أَنَّ امْرَأَةً، وَجِدَتْ، فِي بَعْضِ مَعَازِي رَسُولِ
اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَقْتُولَةً فَأَنْكَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَتْلَ النِّسَاءِ
وَالصِّبْيَانِ.

Sahih Muslim, p. 638, hadith 1744b:

It is narrated by Ibn 'Umar that a woman was found killed in one of these battles; so the Messenger of Allāh ﷺ forbade the killing of women and children.

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا مُحَمَّدُ بْنُ بَشْرٍ، وَأَبُو أُسَامَةَ قَالَ حَدَّثَنَا عُبَيْدُ اللَّهِ
بْنُ عُمَرَ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، قَالَ وَجِدَتْ امْرَأَةً مَقْتُولَةً فِي بَعْضِ تِلْكَ الْمَعَازِي
فَنَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ قَتْلِ النِّسَاءِ وَالصِّبْيَانِ.

32 *Sunan abu Dawud* (Riyadh: Dar al-Haddarah lil-Nasha wa al-Tawziyyah, 2015), p. 337, hadith 2669:

دَثْنَا أَبُو الْوَلِيدِ الطَّلَيْسِيُّ، حَدَّثَنَا عُمَرُ بْنُ الْمُرْقَعِ بْنِ صَيْبِ بْنِ رِبَاحٍ، حَدَّثَنِي أَبِي، عَنْ
جَدِّهِ، رِبَاحِ بْنِ رَيْعٍ قَالَ كُنَّا مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي عَرْوَةَ فَرَأَى
النَّاسَ مُجْتَمِعِينَ عَلَى شَيْءٍ فَبَعَثَ رَجُلًا فَقَالَ "انظُرْ عَلَامَ اجْتَمَعَ هُؤُلَاءِ" فَبَاءَ فَقَالَ

عَلَى امْرَأَةٍ قَتِيلٍ . فَقَالَ «مَا كَانَتْ هَذِهِ لِتُقَاتِلَ» . قَالَ وَعَلَى الْمُقَدَّمَةِ خَالِدِ بْنِ الْوَلِيدِ
فَبَعَثَ رَجُلًا فَقَالَ «قُلْ لِحَالِدٍ لَا يَقْتُلَنَّ امْرَأَةً وَلَا عَسِيفًا» .

33 *Sunan ibn Majah* (Cairo: Dar Al-Hadith, 1998), Vol. 2, p. 526, hadith 2842:

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكَيْعٌ، عَنْ سُفْيَانَ، عَنْ أَبِي الرِّثَادِ، عَنِ الْمُرَّعِجِ
بْنِ عَبْدِ اللَّهِ بْنِ صَيْغِيٍّ، عَنْ حَنْظَلَةَ الْكَاتِبِ، قَالَ غَزَوْنَا مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ فَمَرَرْنَا عَلَى امْرَأَةٍ مَقْتُولَةٍ قَدْ اجْتَمَعَ عَلَيْهَا النَّاسُ فَأَفْرَجُوا لَهُ فَقَالَ (مَا
كَانَتْ هَذِهِ تُقَاتِلُ فِيمَنْ يُقَاتِلُ) . ثُمَّ قَالَ لِرَجُلٍ (انْطَلِقْ إِلَى خَالِدِ بْنِ الْوَلِيدِ فَقُلْ
لَهُ إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِأَمْرِكَ يَقُولُ لَا تَقْتُلَنَّ ذُرِيَّةً وَلَا عَسِيفًا) .

34 This is an eminently reasonable explanation given that the word can also mean “possessions”. Cf. Edward William Lane, *An Arabic-English Lexicon Derived from the Best and Most Copious Eastern Sources* (London: Willams & Norgate 1863), Vol. 1, pp. 964.

35 Al-Waqidi, *Kitab al-Maghazi*, Vol. 3, p. 912.

36 *Ibid.*, Vol. 1, p. 392.

37 *Sahih al-Bukhari*, p. 605, hadith 3012:

حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ، حَدَّثَنَا سُفْيَانُ، حَدَّثَنَا الرَّهْرِيُّ، عَنْ عُبَيْدِ اللَّهِ، عَنِ ابْنِ
عَبَّاسٍ، عَنِ الصَّعْبِ بْنِ جَثَامَةَ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ مَرَّ بِي النَّبِيُّ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ بِالْأَبْوَاءِ - أَوْ يَوْدَانَ - وَسُئِلَ عَنْ أَهْلِ الدَّارِ يُدْبِتُونَ مِنَ الْمُشْرِكِينَ،
فِيصَابُ مِنْ نِسَائِهِمْ وَذُرَارِيَّتِهِمْ قَالَ «هُمْ مِنْهُمْ» . وَسَمِعْتُهُ يَقُولُ «لَا حِجَى إِلَّا لِلَّهِ
وَلِرَسُولِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ» .

38 *Sahih al-Bukhari*, p. 593, hadith 2943:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ، حَدَّثَنَا مُعَاوِيَةُ بْنُ عَمْرٍو، حَدَّثَنَا أَبُو إِسْحَاقَ، عَنْ حُمَيْدٍ، قَالَ
سَمِعْتُ أَدَسًا - رَضِيَ اللَّهُ عَنْهُ - يَقُولُ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا

عَرَا قَوْمًا لَمْ يُغِرَّ حَتَّى يُصْبِحَ، فَإِنْ سَمِعَ أَذَانًا أَمْسَكَ، وَإِنْ لَمْ يَسْمَعْ أَذَانًا أَغَارَ بَعْدَ مَا يُصْبِحُ، فَزَلْنَا خَيْرَ لَيْلًا.

39 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, pp. 642-643. See also Vol. 1, p. 342, Vol. 2, p. 564, Vol. 2, p. 752.

40 Ibid., Vol. 1, p. 21.

41 Ibid., Vol. 1, p. 21.

42 Ibid., Vol. 1, p. 216.

43 *Sunan abu Dawud*, p. 551, hadith 4406:

حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ، حَدَّثَنَا يَحْيَى، عَنْ عُبَيْدِ اللَّهِ، قَالَ أَخْبَرَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَرَضَهُ يَوْمَ أُحُدٍ وَهُوَ ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً فَلَمْ يُجِرَّهُ وَعَرَضَهُ يَوْمَ الْخَنْدَقِ وَهُوَ ابْنُ خَمْسِ عَشْرَةَ سَنَةً فَأَجَارَهُ.

Cf. *Sunan an-Nasa'i*, p. 480, hadith 3461:

أَخْبَرَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ، قَالَ حَدَّثَنَا يَحْيَى، عَنْ عُبَيْدِ اللَّهِ، قَالَ أَخْبَرَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَرَضَهُ يَوْمَ أُحُدٍ وَهُوَ ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً فَلَمْ يُجِرَّهُ وَعَرَضَهُ يَوْمَ الْخَنْدَقِ وَهُوَ ابْنُ خَمْسِ عَشْرَةَ سَنَةً فَأَجَارَهُ.

44 Cf *Sahib Muslim*, p. 690, hadith 1868a:

It was narrated on the authority of Ibn 'Umar, who said that the Messenger of Allāh ﷺ inspected me on the battle-field on the Day of Uhud, when I was fourteen years old. He did not allow me [to take part in combat]. He inspected me on the day of al-Khandaq, at which time I was fifteen years old, and he permitted me [to fight]. Nafi' said: I came to 'Umar b. 'Abd al-'Aziz who was then Caliph, and narrated to him this tradition. He said: 'Surely, this is the demarcation between a minor and a major.' So he wrote to his governors that they should pay subsistence allowance

to anyone who was fifteen years old, but should treat those of lesser age as being children.

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُصَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللَّهِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ، قَالَ عَرَضَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَوْمَ أُحُدٍ فِي الْقِتَالِ وَأَنَا ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً فَلَمْ يُجْزِنِي وَعَرَضَنِي يَوْمَ الْخَنْدَقِ وَأَنَا ابْنُ خَمْسِ عَشْرَةَ سَنَةً فَأَجَارَنِي . قَالَ نَافِعٌ فَقَدِمْتُ عَلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ يَوْمَئِذٍ خَلِيفَةُ حَدَّثَنِي هَذَا الْحَدِيثَ فَقَالَ إِنَّ هَذَا لِحَدِّ يَنْ الصَّغِيرِ وَالْكَبِيرِ . فَكَتَبَ إِلَى عَمَّالِهِ أَنْ يَفْرِضُوا لِمَنْ كَانَ ابْنُ خَمْسِ عَشْرَةَ سَنَةً وَمَنْ كَانَ دُونَ ذَلِكَ فَاجْعَلُوهُ فِي الْعِيَالِ .

45 Ibn Hisham, *As-Sirah an-Nabawiyah* (Beirut: Maktaba Allasrya, 2012), pp. 556-564.

46 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, pp. 512-518.

47 In *As-Sirah an-Nabawiyah* (p. 561), Ibn Hisham gives his own figure of “600 to 700”, but adds that “the exaggerators have given a figure as high as 800 or 900.” Several *ahadith* give a figure of 400. Cf. *Sunan al-Tirmidhi*, Vol. 3, p. 546, hadith 1582.

48 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, pp. 512, 517; *Sunan ibn Majah*, Vol. 2, p. 410, hadith 2541:

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ بْنُ مُحَمَّدٍ، قَالَا حَدَّثَنَا وَكَيْعٌ، عَنْ سُفْيَانَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، قَالَ سَمِعْتُ عَطِيَّةَ الْقُرْظِيَّ، يَقُولُ عَرَضْنَا عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَوْمَ قُرَيْظَةَ فَكَانَ مَنْ أَنْبَتَ قَبْلَ وَمَنْ لَمْ يُنْبِتْ خَلِي سَبِيلَهُ فَكُنْتُ فِي مَن لَمْ يُنْبِتْ خَلِي سَبِيلِي .

49 Ahmad Barakat, *Muhammad and the Jews: A Re-Examination* (New Delhi: Vikas, 1979); Walid N. Arafat “New Light on the Story of Banū Qurayza and the

- Jews of Medina”, *Journal of the Royal Asiatic Society*, Vol. 108, No. 2 (April 1976), pp. 100-107.
- 50 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, p. 512.
- 51 Article 77 in *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.
- 52 Muhammad ibn ‘Ali ibn Muhammad al-Shawkani, *Al-Sayl al-Jarrar al-Mutadaffiq ‘ala Hada’iq al-Azhar* (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1984), Vol. 4, p 532; Muhammad Munir, “The Protection of Civilians in War: Non-Combatant Immunity in Islamic Law”, *Hamdard Islamicus*, Vol. 34, No. 4 (October-December 2011), p. 11.
- 53 Ella Landau-Tasseran, “Non-Combatants’ in Muslim Legal Thought”, Research Monographs on the Muslim World, Series No 1, Paper No 3 (New York: Hudson Institute’s Center on Islam, Democracy, and the Future of the Muslim World, December 2006), pp. 8-9; Ahmed Mohsen Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (Palgrave Series in Islamic Theology, Law, and History, 2011), p. 115.
- 54 Munir, “The Protection of Civilians in War”, p. 11; Al-Dawoody, *The Islamic Law of War*, pp. 115-116; Mohamed Elewa Badar, “*Ius in Bello* under Islamic International Law”, *International Criminal Law Review*, 13 (2013) pp. 593–625.
- 55 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, p. 885-915.
- 56 Al-Dawoody, *The Islamic Law of War*, p. 114.
- 57 Al-Shawkani, *Al-Sayl al-Jarra*, Vol. 4, p. 533.
- 58 Cf. *Sunan an-Nasa’i*, p. 364, hadith 2627:

أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ، عَنْ شُعَيْبٍ، عَنِ اللَّيْثِ، قَالَ حَدَّثَنَا خَالِدٌ، عَنْ ابْنِ أَبِي هِلَالٍ، عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ «جِهَادُ الْكَبِيرِ وَالصَّغِيرِ وَالضَّعِيفِ وَالْمَرْأَةِ الْحَبْحُ وَالْعُمْرَةَ».

59 Al-Dawoody, *The Islamic Law of War*, p. 114.

60 *Al-Muwatta Iman Malik ibn Anas* (Cairo: Dar al-Hadith, 2005), page 319, Book 21, Chapter 3, Hadith 10:

“Do not kill a woman or a child or an aged person. Do not cut down fruit-bearing trees. Do not destroy any place of dwelling. Do not slaughter sheep or camels, except [if you need them] for food. Do not burn bees and do not scatter them. Do not steal from the booty, and do not be cowardly.”

وَحَدَّثَنِي عَنْ مَالِكٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ، بَعَثَ جُيُوشًا إِلَى الشَّامِ فَخَرَجَ يَمْشِي مَعَ يَزِيدَ بْنِ أَبِي سُقْيَانَ - وَكَانَ أَمِيرَ رُبْعٍ مِنْ تِلْكَ الْأَرْبَاعِ - فَتَمَّوْا أَنَّ يَزِيدَ قَالَ لِأَبِي بَكْرٍ إِمَّا أَنْ تَرْكَبَ وَإِمَّا أَنْ أَنْزِلَ . فَقَالَ أَبُو بَكْرٍ مَا أَنْتَ بِتَأْزِلُ وَمَا أَنَا بِرَاكِبٍ إِيَّيَ أَحْتَسِبُ خَطَايَ هَذِهِ فِي سَبِيلِ اللَّهِ ثُمَّ قَالَ لَهُ إِنَّكَ سَتَجِدُ قَوْمًا رَمَعُوا أَنْفُسَهُمْ حَبَسُوا أَنْفُسَهُمْ لِلَّهِ فَذَرَهُمْ وَمَا رَمَعُوا أَنْفُسَهُمْ حَبَسُوا أَنْفُسَهُمْ لَهُ وَسَتَجِدُ قَوْمًا فَخَّصُوا عَنْ أَوْسَاطِ رُءُوسِهِمْ مِنَ الشَّعْرِ فَاضْرِبْ مَا فَخَّصُوا عَنْهُ بِالسِّنْفِ وَإِيَّيَ مُوسِكًا بَعْشَرًا لَا تَقْتُلَنَّ امْرَأَةً وَلَا صَبِيًّا وَلَا كَبِيرًا هَرِمًا وَلَا تَقْطَعَنَّ شَجْرًا مُشِعْرًا وَلَا تُحْرِقَنَّ عَامِرًا وَلَا تَعْقِرَنَّ شَاةً وَلَا بَعِيرًا إِلَّا لِمَا كَلَّكَ وَلَا تَحْرِقَنَّ حِمْلًا وَلَا تُفْرِقَنَّه وَلَا تَغْلُلْ وَلَا تُجَبِّنْ.

61 Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Tarikh al-Rusul wa al-Muluk* (Beirut: Dar al-Sadr, 2008), Vol. 2, p. 518.

62 There are very many *ahadith* regarding the Prophet's

i'tikaf, including *Sunan al-Tirmidhi*, Vol. 3, p. 97, hadith 790:

Abu Hurairah and Aisha narrated: "The Prophet ﷺ would perform i'tikaf during the last ten (days) of Ramadan until Allah took him.

حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ، وَعُرْوَةَ، عَنْ عَائِشَةَ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ يَتَكَبَّفُ الْعَشْرَ الْأَوَاخِرَ مِنْ رَمَضَانَ حَتَّى قَبِضَهُ اللَّهُ . قَالَ وَفِي الْبَابِ عَنْ أَبِي بِنِ كَعْبٍ وَأَبِي لَيْلَى وَأَبِي سَعِيدٍ وَأَنَسٍ وَابْنِ عُمَرَ . قَالَ أَبُو عِيسَى حَدِيثُ أَبِي هُرَيْرَةَ وَعَائِشَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ .

63 See Lane, *Arabic-English Lexicon*, Vol. 2, p. 1597.

64 See note 59 above, particularly:

"You will find a people who say they are totally giving themselves to Allah. Leave them to what they devote themselves to. You will also find some who have shaved the middle of their heads, and you can strike what they have shaved with the sword."

فَقَالَ أَبُو بَكْرٍ مَا أَنْتَ بِتَارِكٍ وَمَا أَنَا بِرَاكِبٍ إِنِّي أَحْتَسِبُ خُطَايَ هَذِهِ فِي سَبِيلِ اللَّهِ ثُمَّ قَالَ لَهُ إِنَّكَ سَتَجِدُ قَوْمًا رَعَمُوا أَنفُسَهُمْ حَبَسُوا أَنفُسَهُمْ لِلَّهِ فَذَرَهُمْ وَمَا رَعَمُوا أَنفُسَهُمْ حَبَسُوا أَنفُسَهُمْ لَهُ وَسَتَجِدُ قَوْمًا فَخَصُوا عَنْ أَوْسَاطِ رُءُوسِهِمْ مِنَ الشَّعْرِ فَاضْرِبْ مَا فَخَصُوا عَنْهُ بِالسَّيْفِ

65 Cf. Taqi ad-Din Ahmad ibn Taymiyyah, *Majmu' al-Fatawa Sheikh ul-Islam Ahmad ibn Taymiyyah* Compilation and arrangement of 'Abdur-Rahman ibn Muhammad ibn Qasim and his son Muhammad (Cairo: Maktaba ibn Taymiyyah), Vol. 28, p. 660.

- 66 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, p. 758.
- 67 *Surah al-Hajj* 22:40.
- 68 Lane, *Arabic-English Lexicon*, Vol. 2, p. 2155.
- 69 Al-Tabari, *Tarikh*, Vol. 2, pp. 659-660.
- 70 Abd Al-Fattah El-Awaisi, "Umar's Assurance of Safety to the people of Aelia (Jerusalem): A Critical Analytical study of the Historical Source", *Journal of Islamic Jerusalem Studies*, Vol. 3, No. 2 (Summer 2000), pp. 47-89.
- 71 Cf. Pnina Sharvit Baruch and Noam Neuman, "Warning Civilians Prior to Attack under International Law: Theory and Practice", in Raul A. Pedrozo and Daria P. Wollschlaeger, eds., *International Law and the Changing Character of War, Volume 87 of International Law Studies* (2011), pp. 359-412.
- 72 *Surah al-Hashr* 59:2.
- 73 Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, p. 374.
- 74 Cf. Joel Hayward, *War is Deceit: An Analysis of a Contentious Hadith on the Morality of Military Deception* MBDA English Monograph Series - Book No. 24 (Amman: Royal Islamic Strategic Studies Centre, 2017).
- 75 Cf. Ibn Hisham, *As-Sirah an-Nabawiyah*, p. 626.
- 76 Al-Waqidi, *Kitab al-Maghazi*, Vol. 3, pp. 929, 931-932.
- 77 *Ibid.*, Vol. 3, p. 929.
- 78 *Sunan abu Dawud*, p. 385, hadith 3004:

حَدَّثَنَا مُحَمَّدُ بْنُ دَاوُدَ بْنِ سَفْيَانَ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الرَّهْرِيِّ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ رَجُلٍ، مِنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ كُفَّارَ قُرَيْشٍ كَتَبُوا إِلَى ابْنِ أَبِي وَمَنْ كَانَ يَعْبُدُ مَعَهُ الْأوثَانَ مِنَ الْأَوْسِ وَالخَزْرَجِ وَرَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَوْمَئِذٍ بِالْمَدِينَةِ قَبْلَ وَقَعَةِ بَدْرٍ إِنَّكُمْ أَوْتِمُّ صَاحِبِنَا

وَأَنَا نَفْسِي بِاللَّهِ لَتُقَاتِلَنَّهُ أَوْ لَتُخْرِجَنَّهُ أَوْ لَنَسِيرَنَّ إِلَيْكُمْ بِأَجْمَعِنَا حَتَّى نَقْتُلَ مُقَاتِلَتَكُمْ وَنَسْتَبِيحَ نِسَاءَكُمْ. فَلَمَّا بَلَغَ ذَلِكَ عَبْدَ اللَّهِ بْنِ أَبِي وَمَنْ كَانَ مَعَهُ مِنْ عِبْدَةِ الْأَوْثَانِ اجْتَمَعُوا لِقِتَالِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَلَمَّا بَلَغَ ذَلِكَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَقِيَهُمْ فَقَالَ «لَقَدْ بَلَغَ وَعِيدُ فُرَيْشٍ مِنْكُمْ الْمَبَالِغَ مَا كَانَتْ تَكِيدُكُمْ بِأَكْرَمَ مِمَّا تُرِيدُونَ أَنْ تَكِيدُوا بِهِ أَنْفُسَكُمْ تُرِيدُونَ أَنْ تُقَاتِلُوا أَبْنَاءَكُمْ وَإِخْوَانَكُمْ». فَلَمَّا سَمِعُوا ذَلِكَ مِنَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَفَرَّقُوا فَبَلَغَ ذَلِكَ كُفَارَ فُرَيْشٍ فَكَتَبَتْ كُفَارُ فُرَيْشٍ بَعْدَ وَقْعَةِ بَدْرٍ إِلَى الْيَهُودِ إِنَّكُمْ أَهْلُ الْحَلَقَةِ وَالْحُصُونِ وَأَنْتُمْ لَتُقَاتِلُنَّ صَاحِبَنَا أَوْ لَتَنْعَلَنَّ كَذَا وَكَذَا وَلَا يَحُولُ بَيْنَنَا وَبَيْنَ حُدَمِ نِسَائِكُمْ شَيْءٌ - وَهِيَ الْخَلَاخِيلُ - فَلَمَّا بَلَغَ كِتَابُهُمُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَجْمَعَتْ بَنُو النَّضِيرِ بِالْغَدْرِ فَأَرْسَلُوا إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اخْرُجْ إِلَيْنَا فِي ثَلَاثِينَ رَجُلًا مِنْ أَصْحَابِكَ وَلِيُخْرِجَ مِنَّا ثَلَاثُونَ حَبْرًا حَتَّى نَلْتَقِيَ بِمَكَانِ الْمَنْصِفِ فَيَسْمَعُوا مِنكَ. فَإِنْ صَدَّقُوكَ وَأَمَّنُوا بِكَ آمَنَّا بِكَ فَقَصَّ خَيْرُهُمْ فَلَمَّا كَانَ الْغَدُ عَدَا عَلَيْهِمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِالْكَتَابِ فَحَصَرَهُمْ فَقَالَ لَهُمْ «إِنَّكُمْ وَاللَّهِ لَا تَأْمَنُونَ عِنْدِي إِلَّا بِعَهْدٍ تُعَاهِدُونِي عَلَيْهِ». فَأَبَوْا أَنْ يُعْطَوْهُ عَهْدًا فَقَاتَلَهُمْ يَوْمَهُمْ ذَلِكَ ثُمَّ عَدَا الْغَدُ عَلَى بَنِي فُرَيْظَةَ بِالْكَتَابِ وَرَكَ بَنِي النَّضِيرِ وَدَعَاهُمْ إِلَى أَنْ يُعَاهِدُوهُ فَعَاهَدُوهُ فَأَنْصَرَفَ عَنْهُمْ وَعَدَا عَلَى بَنِي النَّضِيرِ بِالْكَتَابِ فَقَاتَلَهُمْ حَتَّى تَزَلُّوا عَلَى الْجَلَاءِ فَقُلَّتْ بَنُو النَّضِيرِ وَاحْتَمَلُوا مَا أَقَلَّتِ الْإِبِلُ مِنْ أَمْتَعَتِهِمْ وَأَبْوَابِ بُيُوتِهِمْ وَخَشِبَهَا فَكَانَ مَحْلُ بَنِي النَّضِيرِ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خَاصَّةً أَعْطَاهُ اللَّهُ إِيَّاهَا وَخَصَّه بِهَا فَقَالَ «وَمَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أُوجِفْتُمْ عَلَيْهِ مِنْ خَيْلٍ وَلَا رِكَابٍ» يَقُولُ بَعِيرٍ قِتَالٍ فَأَعْطَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَكْثَرَهَا لِلْمُهَاجِرِينَ وَقَسَمَهَا بَيْنَهُمْ وَقَسَمَ مِنْهَا لِرَجُلَيْنِ مِنَ الْأَنْصَارِ وَكَانَا ذَوِي حَاجَةٍ لَمْ يَقْسِمَ لِأَحَدٍ مِنَ الْأَنْصَارِ غَيْرَهُمَا وَبَقِيَ مِنْهَا صَدَقَةٌ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الَّتِي فِي أَيْدِي بَنِي فَاطِمَةَ

رَضِيَ اللَّهُ عَنْهَا.

79 *Sunan ibn Majah*, Vol. 2, p. 527, hadith 2844:

“It was narrated by Ibn ‘Umar that the Messenger of Allah ﷺ burned the palm trees of the Banu Nadir at al-Buwaira. Then Allah revealed the words: “Whatever [of their] palm-trees you may have cut down or left standing on their roots, it was by Allah's permission so that He might disgrace the transgressors.” [59:5]

حَدَّثَنَا مُحَمَّدُ بْنُ رُحَيْحٍ، أَنبَأَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَرَقَ نَخْلَ بَنِي النَّضِيرِ وَقَطَعَ . وَهِيَ الْبُورَةُ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ ﴿ مَا قَطَعْتُمْ مِنْ لِينَةٍ أَوْ تَرَكُّمُوهَا قَائِمَةً ﴾

80 *Surah al-Hashr* 59:5:

مَا قَطَعْتُمْ مِنْ لِينَةٍ أَوْ تَرَكُّمُوهَا قَائِمَةً عَلَى أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ الْفَاسِقِينَ

81 Cf. Ibn Hisham, *As-Sirah an-Nabawiyyah*, p. 531; Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, pp. 372-373.

82 Abu al-Hasan Ali Ibn Muhammad Ibn Habib al-Mawardi, *Al-Abkam as-Sultaniyyah* (London: Ta-Ha, 2005), p. 82; Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, p. 368.

83 Ibid., Vol. 1, p. 378; cf. *Sunan abu Dawud*, p. 385, hadith 3004.

84 Article 48 in *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.

85 Cf. Deuteronomy 2:34-35, 20:16, Joshua 6:17-24, 11:11, 28:2, 24-28 et.al.

86 Polybius, *Histories*, XXXVIII.21.

87 Article 3(1) in *Geneva Convention for the Amelioration of*

the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

88 Cf. Articles 41(1) and 85(3)(e) in *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977.

89 *Surah Muhammad* 47:4.

90 *Sahih al-Bukhari*, p. 795, hadith 3986:

حَدَّثَنِي عَمْرُو بْنُ خَالِدٍ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا أَبُو إِسْمَاعِيلَ، قَالَ سَمِعْتُ الْبَرَاءَ بْنَ عَازِبٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ جَعَلَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى الرُّمَّةِ يَوْمَ أُحُدٍ عَبْدَ اللَّهِ بْنَ جُبَيْرٍ، فَأَصَابُوا مِنَّا سَبْعِينَ، وَكَانَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَصْحَابُهُ أَصَابُوا مِنَ الْمُشْرِكِينَ يَوْمَ بَدْرٍ أَرْبَعِينَ وَمِائَةً سَبْعِينَ أَسِيرًا وَسَبْعِينَ قَتِيلًا. قَالَ أَبُو سَفْيَانَ يَوْمَ بَدْرٍ، وَالْحَرْبُ سِبْجَالٌ.

91 *Sahih Muslim*, pp. 645-646, hadith 1763:

حَدَّثَنَا هَتَادُ بْنُ السَّرِيِّ، حَدَّثَنَا ابْنُ الْمُبَارَكِ، عَنِ عِكْرِمَةَ بْنِ عَمَّارٍ، حَدَّثَنِي سَمَّاكُ، الْحَنْظَلِيُّ قَالَ سَمِعْتُ ابْنَ عَبَّاسٍ، يَقُولُ حَدَّثَنِي عُمَرُ بْنُ الْخَطَّابِ، وَحَدَّثَنَا زُهَيْرٌ بْنُ حَرْبٍ - وَاللَّفْظُ لَهُ - حَدَّثَنَا عُمَرُ بْنُ يُونُسَ الْحَنْظَلِيُّ حَدَّثَنَا عِكْرِمَةُ بْنُ عَمَّارٍ حَدَّثَنِي أَبُو زَمَيْلٍ - هُوَ سَمَّاكُ الْحَنْظَلِيُّ - حَدَّثَنِي عَبْدُ اللَّهِ بْنُ عَبَّاسٍ قَالَ حَدَّثَنِي عُمَرُ بْنُ الْخَطَّابِ قَالَ لَمَّا كَانَ يَوْمُ بَدْرٍ نَظَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى الْمُشْرِكِينَ وَهُمْ أَلْفٌ وَأَصْحَابُهُ ثَلَاثُمِائَةٌ وَتِسْعَةٌ عَشَرَ رَجُلًا فَاسْتَقْبَلَ نَبِيَّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْقِتْلَةَ ثُمَّ مَدَّ يَدَيْهِ فَجَعَلَ يَهْتِفُ بِرَبِّهِ "اللَّهُمَّ أَنْجِزْ لِي مَا وَعَدْتَنِي اللَّهُمَّ آتِ مَا وَعَدْتَنِي اللَّهُمَّ إِنَّ تَهْلِكَ هَذِهِ الْعِصَابَةُ مِنْ أَهْلِ الْإِسْلَامِ لَا تُعْبَدُ فِي الْأَرْضِ". فَأَرَالَ يَهْتِفُ بِرَبِّهِ مَا دَأَّ يَدَيْهِ مُسْتَقْبِلَ الْقِتْلَةَ حَتَّى سَقَطَ رِدَاؤُهُ عَنْ مَنْكِبَيْهِ فَأَنَّهُ أَبُو بَكْرٍ فَأَخَذَ رِدَاءَهُ فَأَلْقَاهُ عَلَى مَنْكِبَيْهِ ثُمَّ التَزَمَهُ مِنْ ورائِهِ. وَقَالَ يَا نَبِيَّ اللَّهِ كَذَلِكَ مُنَاشِدَتُكَ رَبَّكَ فَإِنَّهُ سَيُنْجِرُ

لَكَ مَا وَعَدَكَ فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ ﴿ إِذْ تَسْتَغِيثُونَ رَبَّكُمْ فَاسْتَجَابَ لَكُمْ أَنِّي مُمِدُّكُمْ
بِأَلْفٍ مِنَ الْمَلَائِكَةِ مُرَدِّينَ ﴾ فَأَمَدَهُ اللَّهُ بِالْمَلَائِكَةِ . قَالَ أَبُو زَيْمِيلٍ حَدَّثَنِي ابْنُ عَبَّاسٍ
قَالَ بَيْنَمَا رَجُلٌ مِنَ الْمُسْلِمِينَ يَوْمَئِذٍ يَشْتَدُّ فِي أَثَرِ رَجُلٍ مِنَ الْمُشْرِكِينَ أَمَامَهُ إِذْ سَمِعَ
ضَرْبَهُ بِالسُّوْطِ فَوَقَّهُ وَصَوَّتِ الْفَارِسُ يَقُولُ أَقْدِمْ حَيْرُومُ . فَنَظَرَ إِلَى الْمُشْرِكِ أَمَامَهُ
غُرًّا مُسْتَلْقِيًّا فَنَظَرَ إِلَيْهِ فَإِذَا هُوَ قَدْ خُطِمَ أَنْفُهُ وَشُقَّ وَجْهُهُ كَضَرْبَةِ السُّوْطِ فَاحْضَرَ ذَلِكَ
أَجْمَعُ . فَجَاءَ الْأَنْصَارِيُّ فُحِّدَتْ بِدَلِكِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ " صَدَقْتَ
ذَلِكَ مِنْ مَدَدِ السَّمَاءِ الثَّلَاثَةَ " . فَتَقَلَّبُوا يَوْمَئِذٍ سَبْعِينَ وَأَسْرُوا سَبْعِينَ . قَالَ أَبُو زَيْمِيلٍ
قَالَ ابْنُ عَبَّاسٍ فَلَمَّا أَسْرُوا الْأَسَارَى قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِأَبِي بَكْرٍ
وَعُمَرَ " مَا تَرَوْنَ فِي هَوْلَاءِ الْأَسَارَى " . فَقَالَ أَبُو بَكْرٍ يَا نَبِيَّ اللَّهِ هُمْ بَنُو الْعَمِ وَالْعَشِيرَةِ
أَرَى أَنْ تَأْخُذَ مِنْهُمْ فِدْيَةً فَتَكُونُ لَنَا قُوَّةٌ عَلَى الْكُفَّارِ فَعَسَى اللَّهُ أَنْ يَهْدِيَهُمْ لِلْإِسْلَامِ
. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " مَا تَرَى يَا ابْنَ الْخَطَّابِ " . قُلْتُ لَا وَاللَّهِ يَا
رَسُولَ اللَّهِ مَا أَرَى الَّذِي رَأَى أَبُو بَكْرٍ وَلَكِنِّي أَرَى أَنْ تَمَكَّنَّا فَنَضْرِبَ أَعْنَاقَهُمْ فَنَمَكِّنَ
عَلَيْهَا مِنْ عَقِيلٍ فَيَضْرِبَ عُنُقَهُ وَتَمَكِّنِي مِنْ فُلَانٍ - نَسِيْبًا لِعُمَرَ - فَأَضْرِبَ عُنُقَهُ فَإِنَّ
هَوْلَاءِ أُمَّةٍ الْكُفْرِ وَصَنَادِيْدُهَا فَهَوِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا قَالَ أَبُو بَكْرٍ
وَلَمْ يَهْوَمَا قُلْتُ فَلَمَّا كَانَ مِنَ الْعَدِ حِثٌّ فَإِذَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَبُو
بَكْرٍ قَاعِدَيْنِ بَيْنَكَانِ قُلْتُ يَا رَسُولَ اللَّهِ أَخْبِرْنِي مِنْ أَيِّ شَيْءٍ تَبْكِي أَنْتَ وَصَاحِبُكَ فَإِنَّ
وَجَدْتُ بَكَاءَ بَيْتِكَ وَإِنَّ لَمْ أَجِدْ بَكَاءَ تَبَاكَيْتُ لِبُكَائِكُمَا . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ " أَبْكِي لِلَّذِي عَرَضَ عَلَيَّ أَصْحَابُكَ مِنْ أَخْلَهِمُ الْفِدَاءَ لَقَدْ عُرِضَ عَلَيَّ عَدَاؤُهُمْ
أَدْنَى مِنْ هَذِهِ الشَّجَرَةِ " . شَجَرَةٌ قَرِيبَةٌ مِنْ نَبِيِّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ . وَأَنْزَلَ اللَّهُ عَزَّ
وَجَلَّ ﴿ مَا كَانَ لِنَبِيِّ أَنْ يُكُونَ لَهُ أَسْرَى حَتَّى يُخْرَجَ فِي الْأَرْضِ ﴾ إِلَى قَوْلِهِ ﴿ فَكَلُوا مِنَّمَا
عَنِتَّمْ حَلَالًا طَيِّبًا ﴾ فَاحْلَلَّ اللَّهُ الْغَنِيْمَةَ لَهُمْ .

93 Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, pp. 107-110.

94 *Sunan abu Dawud*, pp. 340-341, hadith 2692:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ التَّمِيمِيُّ، حَدَّثَنَا مُحَمَّدُ بْنُ سَلَمَةَ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ يَحْيَى
بْنِ عَبَّادٍ، عَنْ أَبِيهِ، عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الرَّبِيعِ عَنْ عَائِشَةَ، قَالَتْ لَمَّا بَعَثَ أَهْلَ مَكَّةَ
فِي فِدَاءِ أَسْرَاهُمْ بَعَثَ زَيْنَبَ فِي فِدَاءِ أَبِي الْعَاصِ بِمَالٍ وَبَعَثَتْ فِيهِ بِقِلَادَةٍ لَهَا
كَانَتْ عِنْدَ خَدِيجَةَ أَدَخَلَتْهَا بِهَا عَلَى أَبِي الْعَاصِ . قَالَتْ فَلَمَّا رَأَاهَا رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَقَّ لَهَا رِقَّةً شَدِيدَةً وَقَالَ "إِنْ رَأَيْتُمْ أَنْ تَطْلِقُوا لَهَا أَسِيرَهَا
وَرُدُّوْا عَلَيْهَا الَّذِي لَهَا". فَقَالُوا نَعَمْ . وَكَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَخَذَ
عَلَيْهِ أَوْ وَعَدَهُ أَنْ يُخَيِّئَ سَبِيلَ زَيْنَبَ إِلَيْهِ وَبَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
زَيْنَبَ بِنَ حَارِثَةَ وَرَجُلًا مِّنَ الْأَنْصَارِ فَقَالَ "كُونَا يَظُنَّ يَأْتِجُ حَتَّى تَمُرَّ بِكَمَا زَيْنَبُ
فَتَصْحَبَاهَا حَتَّى تَأْتِيَا بِهَا".

95 *Surah al-Anfal* 8:67-68.

96 Cf. Al-Dawoody, *The Islamic Law of War*, pp. 136-138;
Khadduri, *War and Peace in the Law of Islam*, pp. 127-128.

97 *Surah al-Anfal* 8:71.

98 Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, pp. 110-111, 142,
201.

99 *Ibid.*, Vol. 1, p. 309.

100 Cf. *Sunan al-Tirmidhi*, Vol. 3, p. 543, hadith 1582:

حَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا اللَّيْثُ، عَنْ أَبِي الرَّبِيعِ، عَنْ جَابِرٍ، أَنَّهُ قَالَ رُمِيَ يَوْمَ الْأَحْرَابِ
سَعْدُ بْنُ مُعَاذٍ فَقَطَعُوا أَكْلَهُ أَوْ أَبْجَلَهُ حَسَمَهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
بِالنَّارِ فَاتَّفَحَتْ يَدُهُ فَتَرَكَهُ فَنَزَفَهُ الدَّمُ حَسَمَهُ أُخْرَى فَاتَّفَحَتْ يَدُهُ فَلَمَّا رَأَى
ذَلِكَ قَالَ اللَّهُمَّ لَا تُخْرِجْ نَفْسِي حَتَّى تُبْرِئَ عَيْنِي مِنْ بَيْ قُرَيْظَةَ . فَاسْتَمْسَكَ عِرْقُهُ فَمَا
قَطَرَ قَطْرَةً حَتَّى تَرَوْا عَلَى حُكْمِ سَعْدِ بْنِ مُعَاذٍ فَأَرْسَلَ إِلَيْهِ حُكْمٌ أَنْ يُقْتَلَ رِجَالَهُمْ

وَيُسْتَحْيَى نِسَاؤُهُمْ يَسْتَعِينُ بِهِنَ الْمُسْلِمُونَ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
 «أَصَبَتْ حُكْمَ اللَّهِ فِيهِمْ» . وَكَانُوا أَرْبَعَمِائَةٍ فَلَمَّا فَرَّعَ مِنْ قَبْلِهِمْ انْتَقَى عَرْفَهُ فَأَتَتْ
 . قَالَ وَفِي الْبَابِ عَنْ أَبِي سَعِيدٍ وَعَطِيَّةَ الْقُرْظِيِّ . قَالَ أَبُو عَيْسَى هَذَا حَدِيثٌ
 حَسَنٌ صَحِيحٌ .

101 Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, p. 512.

For the Torah's recommended treatment of prisoners captured during the invasion of Canaan, see Deuteronomy 20:10-17:

“When you march up to attack a city, make its people an offer of peace.¹¹ If they accept and open their gates, all the people in it shall be subject to forced labor and shall work for you.¹² If they refuse to make peace and they engage you in battle, lay siege to that city.¹³ When the Lord your God delivers it into your hand, put to the sword all the men in it.¹⁴ As for the women, the children, the livestock and everything else in the city, you may take these as plunder for yourselves. And you may use the plunder the Lord your God gives you from your enemies.¹⁵ This is how you are to treat all the cities that are at a distance from you and do not belong to the nations nearby.¹⁶ However, in the cities of the nations the Lord your God is giving you as an inheritance, do not leave alive anything that breathes.¹⁷ Completely destroy them—the Hittites, Amorites, Canaanites, Perizzites, Hivites and Jebusites—as the Lord your God has commanded you.”

102 Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, p. 119; Ibn Hisham, *As-Sirah an-Nabawiyah*, p. 362.

103 *Sahih al-Bukhari*, p. 604, hadith 3008:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ، حَدَّثَنَا ابْنُ عُيَيْنَةَ، عَنْ عَمْرٍو، سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ لَمَّا كَانَ يَوْمَ بَدْرٍ أُتِيَ بِأَسَارِي، وَأُتِيَ بِالْعَبَّاسِ وَلَمْ يَكُنْ عَلَيْهِ ثَوْبٌ، فَنَظَرَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَهُ فَيَصًّا فَوَجَدُوا فَيَصَّ عَبْدُ اللَّهِ بْنُ أَبِي يَقْدُرٍ عَلَيْهِ، فَكَسَاهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِيَّاهُ، فَلَدَّكَ نَزَعَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَيَصَّهُ الَّذِي أَلْبَسَهُ. قَالَ ابْنُ عُيَيْنَةَ كَأَنَّ لَهُ عِنْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَدٌ فَأَحَبَّ أَنْ يَكْفِيَهُ.

104 Ibn Hisham, *As-Sirah an-Nabawiyyah*, p. 362; Al-Waqidi, *Kitab al-Maghazi*, Vol. 1, p. 119.

105 Ibid.

106 Ibid., p. 107.

107 Ibid., Vol. 2, p. 847.

108 Ibn Hisham, *As-Sirah an-Nabawiyyah*, p. 844.

109 Cf. Fred McGraw Donner, *The Early Islamic Conquests* (Princeton, NJ: Princeton University Press, 1981), p. 64.

110 Ibn Hisham, *As-Sirah an-Nabawiyyah*, p. 626; Al-Waqidi, *Kitab al-Maghazi*, Vol. 2, pp. 706-707.

111 Ibn Hisham, *As-Sirah an-Nabawiyyah*, p. 597.

112 *Surah Yusuf* 12:92.

113 *Sahih al-Bukhari*, p. 633, hadith 3144:

حَدَّثَنَا أَبُو الثُّعْمَانِ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - قَالَ يَا رَسُولَ اللَّهِ إِنَّهُ كَانَ عَلَيَّ اعْتِكَافٌ يَوْمٍ فِي الْجَاهِلِيَّةِ، فَأَمَرَهُ أَنْ يَنْفِي بِهِ. قَالَ وَأَصَابَ عُمَرُ جَارِيَتَيْنِ مِنْ سَبِي حُنَيْنٍ، فَوَضَعَهُمَا فِي بَعْضِ بُيُوتِ مَكَّةَ - قَالَ - فَمَنَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَيَّ سَبِي حُنَيْنٍ فَبَجَعُوا لِيَسْعُونَ فِي السِّبْكِ فَقَالَ عُمَرُ يَا عَبْدَ اللَّهِ، انْظُرْ مَا هَذَا فَقَالَ مَنْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَيَّ السَّبِي. قَالَ أَذْهَبَ فَأَرْسِلِ الْجَارِيَتَيْنِ. قَالَ نَافِعٌ وَلَمْ يَعْتَمِرْ رَسُولُ اللَّهِ

صلى الله عليه وسلم مِنَ الْجِعْرَانَةِ وَلَوْ اعْتَمَرَ لَمْ يَخَفْ عَلَى عَبْدِ اللَّهِ. وَزَادَ جَرِيرُ بْنُ حَازِمٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ مِنَ الْحَمْسِ. وَرَوَاهُ مَعْمَرٌ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ فِي النَّذْرِ وَلَمْ يَقُلْ يَوْمَ.

114 *Surah Tawbah* 9:60.

115 *Surah Al-Insan* 76:8.

116 *Ephesians* 6:5: “Slaves, obey your earthly masters with respect and fear, and with sincerity of heart, just as you would obey Christ.”

117 *Bulugh al-Maram*, Book 15, hadith 1434 (found in *Sahih al-Bukhari*, hadith 1434):

وَعَنْ عَمْرٍو بْنِ الْحَارِثِ - أَخِي جُوَيْرِيَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: ﴿ مَا تَرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ مَوْتِهِ دِرْهَمًا، وَلَا دِينَارًا، وَلَا عَبْدًا، وَلَا أَمَةً، وَلَا شَيْئًا، إِلَّا بَعَلْتَهُ الْيَتَامَى، وَسَلَا حَهُ، وَأَرْضًا جَعَلَهَا صَدَقَةً ﴾

118 *Al-Muwatta Iman Malik ibn Anas*, page 539, Book 38, Chapter 9, Hadith 15:

حَدَّثَنِي مَالِكٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ، زَوْجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنِ الرِّقَابِ أَيُّهَا أَفْضَلُ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ”أَعْلَاهَا تَمَنَّا وَأَنْفُسُهَا عِنْدَ أَهْلِهَا“.

119 *Sahih al-Bukhari*, p. 503, hadith 2547:

حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ، أَخْبَرَنَا سُفْيَانُ، عَنْ صَالِحٍ، عَنِ الشَّعْبِيِّ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ - رَضِيَ اللَّهُ عَنْهُ - قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ”أَيُّمَا رَجُلٍ كَانَتْ لَهُ جَارِيَةٌ فَأَدَّبَهَا فَأَحْسَنَ تَأْدِيبَهَا، وَأَعْتَقَهَا وَتَزَوَّجَهَا، فَلَهُ أَجْرَانِ، وَأَيُّمَا عَبْدٍ أَدَّى حَقَّ اللَّهِ وَحَقَّ مَوْلِيهِ، فَلَهُ أَجْرَانِ“.



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