

Hirabah, not Jihad (Jihad vs. Terrorism and Rebellion)

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Overview:

The purpose of this activity is to acquaint students with the Islamic concept of *jihad*. The lesson discusses the distinction between jihad as a principle of social justice, and as a military institution entrusted to authorities in society. Students learn about the categories of illegitimate violence in society, namely rebellion and terrorism, brigandage and other forms of mayhem against the public, designated as *hirabah* in Islamic law.

Objectives:

Students should be able to:

- define jihad in its literal and applied meanings, as a principle and as an institution
- describe legitimate conduct of war according to Islamic law
- differentiate between rebellion (*baghy*) and terrorism (*hirabah*) according to Muslim jurists
- explain how Muslim jurists characterize *hirabah*, and describe the basis for their judgement that it is a serious, punishable criminal act

Procedure:

1. Using the **Powerpoint** or **PDF** file that accompanies this lesson, make transparencies for use on an overhead projector, or project the Powerpoint slides onto a monitor for the whole class. Show students **Slide #1**, and after reading the accompanying notes, discuss the concepts shown on the slide, differentiating among the various dimensions of jihad according to Muslim jurists. The teacher may want to supplement the notes text to discuss the context in which these concepts relate to jihad, by referring to a dictionary and eliciting prior knowledge and concepts from other belief systems and contemporary life that the students can contribute to the discussion.
 - Discuss definitions of the terms *principle* and *institution*.
 - Discuss the values expressed by the principle of jihad. List acts of conscience and social activism that would fit the definition. Discuss its sources in belief in God and in the example of prophethood.
 - Give examples of historical groups in various cultures that have justified violence in the name of social justice.
 - How do violations of ethical and moral values, such as stealing, lying, and causing injury to others relate to social justice?
 - What are the moral implications of the statement "The ends justify the means"? Clarify that in the Islamic ethical system, evil means are not justified by good ends.
 - Just means must be used to achieve moral and ethical ends. What are the implications of this teaching in a national, domestic and global context?

2. Using **Slide #2** and the accompanying notes,
 - Discuss the institution of jihad as defensive warfare, and relate it to concepts of just warfare and self-defense in various legal systems.
 - Describe the conditions of jihad as military struggle, and the historical conditions under which warfare and territorial expansion took place before the twentieth century. Do these conditions still hold today? If not, why not?
 - What institutions were formed to prevent international conflict and promote cooperation? When were they formed? How successful have these institutions been, and why? Have students assess the future prospects of these organizations.
3. Using **Slide #3**, explain and analyze the concept of *hirabah* and the reasons why it is considered a serious crime.
4. Using **Slide #4**, and its accompanying notes,
 - Explain the concepts of rebellion (*baghy*) and *hirabah*, and discuss the reasons why groups may undertake rebellions against the government, both legitimate and illegitimate. How does the target of rebellion (the government) differ from the target of violence in *hirabah* (the innocent public)?
 - According to Muslim jurists, what should the government do about rebellion? What should be done about *hirabah*? Why is the penalty for *hirabah* more serious than for rebellion?
5. Have students write an essay or paragraph analyzing the concept of *hirabah* according to Muslim jurists, and explain why it does not fit in the category of *jihad* (because it is not conducted according to the proper principles, because its target against the civilian public is not legitimate, and because it does not fall within the limitations of just warfare) Why does it fit the description of a punishable criminal act (because it targets unsuspecting members of the public as they go about their lives, because its victims have no warning and no defense, and cannot seek safety for their lives and property, because it disrupts civil society and its functioning, and destroys the mutual trust upon which human relations depend in civil society.)

Resources:

Sherman A. Jackson, "Jihad and the Modern World," *The Journal of Islamic Law and Culture*, 7:1 (Spring/Summer 2002).

Sherman A. Jackson, "Domestic Terrorism in the Islamic Legal Tradition." (Fall 2001).

Mohammed Fadel, "Jihad and Hirabah" unpublished, 2002, by permission of the author.

Slide 1

In defining jihad, it is important to make a distinction between jihad as a principle and jihad as an institution of the state or government.

→ **jihad as a principle** is a broad, abstract concept, a general idea and value that is not limited to a single application; applying the principle to a given situation requires discretion and understanding of its multiple implications

→ **jihad as an institution** = an institution is a concrete, established presence that emerges out of essential human interests and needs, in order to promote and ensure the implementation of these interests, needs and concerns; an institution relies less on discretion, BUT, it is essential that the institution be established so that it has the integrity to carry out its function.

As a principle, JIHAD means "sacrificial struggle." At its basis is the commitment to sacrifice of self and personal interests in order to seek God-given aims. It includes the struggle to protect the weak in society, to guard and strive against oppression and injustice. Carrying out the principle of jihad can take many manifestations, such as speaking out against tyranny, placing one's goods and physical strength in the service of the poor, writing and scholarship, or simply the striving to overcome one's appetites and weaknesses, and personal obstacles. As a principle, jihad has nothing to do with armed struggle. For example, Prophet Muhammad outlined the Greater Jihad as a struggle against one's baser instincts. In early Makkan revelations of the Qur'an, jihad is described as proclaiming the truth in the face of opposition.

Only JIHAD as a PRINCIPLE is relevant to social justice. JIHAD AS SOCIAL JUSTICE means the following:

- If a person is in a position of authority and power, it means "to do the right thing," to be part of the solution rather than part of the problem; it means to overcome the baser instincts to put aside ambition in favor of the greater good, to right wrongs
- For any individual, jihad means stating the truth in front of a tyrannical ruler, or indeed any ruler, to care for the weak, oppressed and disenfranchised.
- For the *ulama*, or religious scholars, the principle of jihad means NOT using religious or official authority to promote one's career and self-interest; rather it means using one's office and authority to promote the greater good (public interest, or *maslahah*) in the spirit of sacrificial struggle. Religious scholars as intellectuals are responsible for this enterprise—calling society to its better self, but other persons of talent and conscience can do so as well.

JIHAD (jeh-HAHD) = to make an effort to overcome difficulty, to struggle.

- internal dimension = the struggle against destructive and self-destructive inclinations, sin or excess. "*Jihad al-Nafs*" is the struggle to become a better person, to acquire virtuous character and obedience to God
- social dimension = struggling for social justice, "to be part of the solution" in one's life work. Can be achieved by writing, speaking and doing community service, putting aside ambition to do what is right.
- institutional dimension = to fight oppression and persecution, to defend against aggression, but within strict limits of conduct that preserve the lives of innocents and the environment.

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Slide 2

Jihad as an institution of armed struggle against non-Muslims, can be undertaken only by a government under the limitations on legitimate conduct of war. Its use is conditional, not persistent or open-ended, nor is it directed against people because of religious differences.

Jihad could NOT be undertaken:

- (1) to force people to convert
- (2) to annihilate non-Muslims.

Jihad as an institution is either defensive or pre-emptive, meaning that it can be undertaken if an attack is imminently expected. The necessity for military readiness and defensive jihad stemmed from the fact that the rule of state relations in pre-modern times was based on a nearly constant or potential state of war. Among scholars of Muslim history, Fred Donner has argued that in prophetic and classical Muslim history, relations among neighboring states were characterized by a nearly constant state of war. The Roman and Persian Empires are examples of this trend, and the history of medieval European kingdoms offers additional examples.

Religious tolerance or persecution also existed at the whim of individual rulers, so that the ability to follow, preach or convert to a faith was always endangered, and often conflicted with laws and decrees requiring worship of the rulers themselves. This was the situation that both Jews and early Christians faced under Roman rule. Later European history, after the Protestant Reformation, offers examples of sectarian struggles within Christianity involving kings and queens who wished to enforce their religious views by means of edicts and warfare, persecuting religious minorities, and putting down rebellions. One outcome of these centuries of religious warfare were constitutions that separated the power of governments from the power and authority of religious institutions. The American colonies were founded and their leaders and citizens learned to appreciate religious freedom in the context of these European struggles.

Pre-modern communities or states were only as safe as they were strong. Peace treaties were the exception to this state of affairs, but they were provisional or temporary in nature, and did not reduce the need for military readiness. When peace could be achieved, it was achieved by treaty or direct rule.

Throughout pre-modern times, people all over the world existed in a potential state of war. The twentieth century, with its unprecedentedly destructive wars that affected many nations, encouraged attempts to alter the pre-modern state of affairs. The post-World War I League of Nations, and the post-World War II United Nations were organizations formed to preserve territorial boundaries fixed by treaty agreements or acquiescence.

According to many Muslim and other religious jurists and scholars, as well as intellectuals of many cultures, humans have the potential to live in a state of peace, as long as such international agreements hold. Muslim jurists have written that the meaning of jihad in the 20th century requires change in the law of jihad as an institution, making it unnecessary except for defense against attack. Japan's demilitarization is a good example of agreement among scholars and leaders in many cultures, as are agreements by members of the Organization of African States to respect even harmful colonial borders that divided the continent into today's independent countries. OAS members have officially placed the need for general peace and cooperation over the need to correct unjust boundaries. Agreements such as NATO (North Atlantic Treaty Organization) in Europe, are further examples, following centuries of intra-European wars.

Under these jurists' rulings and international law, it is the responsibility of the most powerful nations to uphold the state of peace by resisting calls to empire-building and control of other nations, and to contribute to sustain the state of peace and prosperity, instead of taking the world back to a time when war was the norm for international relations, and the strong devoured the weak. Considering the extreme destructiveness of modern warfare, the effects of weapons of mass destruction and their disregard of civilian lives and the environment, this is a matter of the gravest importance for citizens everywhere.

Limits on the Conduct of Jihad

- Jihad can ONLY be declared by a legitimate, recognized religious authority with the means to carry out such action responsibly under its authority
- Jihad may NOT be defined as a call for any group of Muslims to wage a war against indefinite others, such as a general call for "jihad against all unbelievers"
- Using the concept of jihad to justify indiscriminate violence is contrary to Islamic law. Violence that springs from such a misguided interpretation is NOT JIHAD. It falls under other Islamic principles and categories of law, such as hirabah, or terrorism.

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Slide 3

The Muslim state, or rulers, had power, but the religious jurists (*ulama*), or specialists in Islamic law, established authority through the legitimacy they gained for the working out of Shari'ah, or Islamic law. The State had the power to coerce, while the religious establishment could enlist compliance, using its authority to promote social justice. People followed the *ulama* out of the belief that it was the right thing to do, as long as they enjoyed legitimacy by staying true to their roles as holders of religious knowledge. Rulers had to take the legitimacy of the *ulama* and Islamic law into account, to keep the support of the people.

As a leading group outside of government, the *ulama* were traditionally suspicious of state power, and they were in a position to carry out the principle of jihad (meaning to support social justice) through persuasion. In spite of their suspicion of the state, the jurists generally granted to the state (the rulers) sole power to coerce through violent means—in others, to conduct warfare within the framework of jihad as an institution. They agreed that civil order was the greater good, and sanctioning rebellion would encourage a chaotic situation that was harmful to society in the long run, and may make it vulnerable to attack from outside.

Muslim jurists identified two exceptions to the state's (meaning government's) monopoly on the use of violence:

rebellion (Arabic *baghy*) = violence against the state, setting out to topple the government against which a group has grievances, in order to right a perceived wrong

terrorism (Arabic *hirabah*) = publicly directed violence carried out by individuals or groups that has the effect of spreading fear, by preventing people from taking any safekeeping measures against physical or property damage.

Both rebellion and terrorism are institutions in which groups take public power into their own hands, either with the intent of enriching themselves, as in highway robbery or organized crime, or in order to address political or social grievances, to try to harm the government by disrupting public order. It is unimportant whether such publically-directed violence was intended to achieve legitimate or illegitimate goals—the labels still apply.

LAW OF HIRABAH

- HIRABAH = a concept in Islamic law that protects public safety. According to the law of hirabah, publicly directed violence is a capital crime. It is unlawful and punishable to target the public in ways that make it impossible for people to take safe-keeping measures against injury to their persons and property.
- FASAD (fah-SAAD) = a term used in the Qur'anic verse that is the source of the law of hirabah. Fasad means causing mischief, mayhem, and destruction in the land, including acts of terror. Fasad as a concept may also include other forms of disruption of peaceful civic life, but only hiraba is a capital offense.

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Slide 4

As the diagram shows, the difference between rebellion (*baghy*) and terrorism (*hirabah*) in Islamic law is that rebellion from a segment of the public targets the government because of grievances against it (legitimate or not), but terrorism (*hirabah*) represents one segment of the public attacking another, usually larger, segment of the public. *Hirabah*, whether it is based on legitimate complaints or not, is a capital crime of the most serious kind, and is NOT considered a form of jihad, and is NOT a means for seeking social justice.

The *ulama* unanimously labeled rebellion unlawful, an act of disobedience to God. However, Muslim jurists also recognized that governments are sometimes tyrannical, and might be overthrown by widespread rebellion. In the American *Declaration of Independence*, Thomas Jefferson and his co-signers clearly laid out examples of such conditions for legitimate rebellion.¹ Muslim scholars, however, supported public order and did not lightly recognize or legitimize this form of violence as a means to achieve redress of grievances, or to achieve social justice. The jurists agreed that rebellion should be put down, but the jurists also denied the state the right to execute the rebels or punish them, except for crimes like rape and theft committed in the course of rebellion, which had no connection to the act of the rebellion. The jurists set conditions under which rebels would not be punished: first, the rebels must be numerous enough to show that dissatisfaction with the government was a widespread problem. They said that rebellion cannot be legitimized, but if it was related to issues of social justice, the rebels cannot be punished. If, however, the rebellion succeeded in overthrowing the government, then the newly emerging government was seen as legal and legitimate, unless it was illegitimate for other reasons. The jurists made this ruling in order to distinguish such action against the state alone from crimes against society or individuals. The jurists left a legal door open for the possibility that rebellion might be necessary against tyranny.

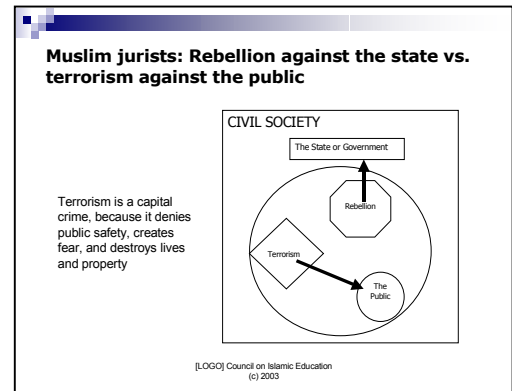
Jurists left no door open for publicly directed violence, or *hirabah*. Terrorism, which modern Muslim jurists have classified under *hirabah*, is an instance in which an individual or group takes violent action in the public space. *Hirabah* was defined as:

- individuals or groups carrying out violence directed against the public, against civilians.
- an action that has the effect of spreading fear by preventing people from taking any safekeeping measures against physical or property damage.
- such violence may be overt or stealthy, and may include serial murders, burnings, bombings, or property destruction, not just political acts of violence
- by arousing general fear and lack of safety, public life is endangered and civic life becomes completely disrupted and unpredictable.

The jurists prohibited *hirabah* because Islam places an absolute value on public safety and protection as God-given human rights. These rights belong to "the sphere of God." A right of God in Islamic law is one based on universal rights, whose penalty is not subject to the discretion of the judges; neither can acts of *hirabah* be ignored. *Hirabah* is punishable by the most severe penalty mentioned in the Qur'an, where it is called *fasad* (fah-SAAD) in chapter 5, verse 33, meaning in this case mayhem and destruction.

Jurists distinguished *hirabah* from *baghy* by the number of perpetrators and by the publicly directed nature of the violence. The diagram above shows that *baghy* represents violence by a segment of the public against the government, but *hirabah* represents violence by a segment of the public against another segment of the public, specific or general. Evaluate the significance of such categories: If jurists had not distinguished between the two types of violence, then what could states assert about rebels?

In the past, the term *hirabah* used to be associated especially with highway robbery, extortion through violence, and brigandage, meaning roving bands of robbers and plunderers who preyed upon the roads outside of towns and cities, wastelands, and remote areas. This sort of piracy by land endangered public safety, trade and prevented the public from going about their business because it created a climate of fear. This meaning, in the judgement of modern Muslim jurists, best fits the definition of terrorism in the modern context. The difference is that such violence takes place within cities, but it shares the important aspect that it makes civil life impossible by destroying public safety. Therefore, Muslim jurists consider it a crime, and NOT a legitimate means of protest or political action for social justice as required by the proper application of the term *jihad*.



¹ "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation..." see full text for discussion at the National Archives and Records Administration site: http://www.archives.gov/exhibit_hall/charters_of_freedom/declaration/declaration_transcription.html

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Muslim jurists: Rebellion against the state vs. terrorism against the public

Terrorism is a capital crime, because it denies public safety, creates fear, and destroys lives and property

