

How Just Is Islam's Just-War Tradition?

by Evan R. Goldstein

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Byline: EVAN R. GOLDSTEIN

Last year, John Kelsay went to Oman to talk about war. The first night there, speaking at the Grand Mosque in Muscat, he faced a large audience of students studying religion. Discussing the attacks of September 11, 2001, Kelsay argued that the perpetrators had violated the noble tradition of jihad, which is based on legal judgments about the ethics of armed struggle that stretch back to Islam's formative years. Calling on his listeners to challenge the self-styled "jihadis" who claimed that flying airplanes into the World Trade Center's twin towers and other acts of private warfare, vengeance, and terrorism were justified by traditional texts, Kelsay urged the students to consider how the concept of jihad has evolved and why it has become such a hotly contested topic.

A professor of religion at Florida State University, Kelsay is one of a small but growing group of scholars, mostly in the West, who compare Western and Islamic traditions on the morality of warfare. That has drawn them into a debate over the meaning of jihad -- a debate, they say, that has major consequences for the future of democracy in the Middle East.

In his recent book, *Arguing the Just War in Islam* (Harvard University Press), Kelsay explains that, in earlier centuries, radical claims were kept in check by recognized scholars who provided authoritative interpretations of Shariah, or Islamic law. Today, however, the postcolonial Muslim world is racked by a crisis of political and religious legitimacy. Into the void has stepped a literate, professional class of devout Muslims -- most prominently Osama bin Laden and Ayman al-Zawahiri -- who reject the precedents of generations of elite Muslim jurists.

The contemporary jihadi movement is, in effect, attempting to claim the mantle of the Islamic just-war tradition, Kelsay says. Because the jihadists draw on such deep roots within Islam, their arguments are not easy to dismiss. "That is why it is not sufficient to say that they hijacked Islam or that they exist outside an Islamic framework. It is more complex than that," Kelsay says.

At the Grand Mosque, he explained why -- as "a religious man, a Christian" -- he believes that America's military response to the events of September 11 must be carried out in accordance with the West's own just-war principles. In a sense, he told the students, the just-war and jihad traditions are analogous, and their shared belief in applying moral criteria to decisions about peace and war

could serve as the foundation for a new conversation between the West and the Muslim world.

Indeed, in the years since September 11, that dialogue has already begun.

When the World Trade Center towers were still a smoldering heap of rubble, Jean Bethke Elshtain says she was dismayed to hear so much "exculpatory breast-beating coming out of the academy." She was disgusted, and worried: How would America conduct its new war on terror?

Elshtain, a professor of social and political ethics at the University of Chicago Divinity School, vented her anxieties to some friends and colleagues. Those initial conversations became the genesis of "What We're Fighting For," a February 2002 petition signed by a diverse array of 60 academics and public intellectuals, including Francis Fukuyama, Robert P. George, Samuel P. Huntington, James Turner Johnson, Kelsay, Robert D. Putnam, Theda Skocpol, and Michael Walzer. It was both a declaration of support for the war on terror and an appeal that it be conducted in accordance with just-war principles. The document also expressed a desire to "reach out to our brothers and sisters in Muslim societies."

Translated into Arabic in newspapers and magazines across the Middle East, the statement generated a "stunning" response, Elshtain says. The letters and counterstatements that poured in spoke to a desire for an authentic exchange of ideas about issues of justice and war. Even fiercely critical rejoinders -- like the one sent by a group of Saudi intellectuals mocking America's "so-called 'just war'" -- concluded with a call for dialogue.

In 2005 the Institute for American Values opened the dialogue by organizing a meeting in Malta. "It was rough going at the beginning," Elshtain says. James Turner Johnson, a professor of religion at Rutgers University at New Brunswick, rose to deliver some impromptu remarks about just-war theory as a point of departure for the discussion. It worked, sort of. "I got invective hurled at me from every corner from the Arabs in the room," Johnson recalls. "They were yelling that just war is just another doctrine of holy war, and that I was justifying the Crusades, and that I am no better than the jihadists." As Kelsay later did in Oman, American scholars (Kelsay among them) insisted that just-war criteria can be a tool to evaluate -- and oppose -- U.S. policy.

Kelsay, a mild-mannered man in his mid-50s, brings to the just-war debate a quarter-century of work in the

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comparative study of military ethics in Islam and the West. He and Johnson, his longtime collaborator, are the first to admit that they occupy a lonely sliver of intellectual real estate. "We are in the minority, not only among those who study Islam, but also among those who work on Western moral doctrine and the just-war tradition," Johnson says.

As recently as 1987, nobody was undertaking such scholarship. That was the year Johnson and Kelsay met at a National Endowment for the Humanities seminar on Johnson's book *The Quest for Peace: Three Moral Traditions in Western Cultural History* (Princeton University Press, 1987). "There was nothing, period," Johnson says in a laconic drawl. At that time, the study of Islam was dominated by specialists who focused very narrowly on a particular region or a particular slice of history. Backed by a grant from the U.S. Institute of Peace, Johnson and Kelsay organized a series of conferences in the late 1980s, bringing together for the first time just-war theorists and Islamic-studies scholars. The papers were then published in two groundbreaking volumes: *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (Greenwood Press, 1990), and *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions* (Greenwood, 1991).

To this day, very few academics are able to toggle back and forth between the jihad and just-war frameworks. Still, "September 11 focused this issue in a lot of people's minds, especially in the policy-making world and in the U.S. armed forces," says Sohail Hashmi, an associate professor of international relations at Mount Holyoke College. He is encouraged by the number of young political scientists he meets who are studying comparative ethics and comparative political theory. The FBI is interested as well; Kelsay confirms that he has briefed officials from the bureau on his work. And Hashmi delivers a lecture on the jihad tradition every fall to the entire class of the National War College.

How do the just-war and jihad traditions compare? Just-war theory is widely accepted in the West. Not only is it the lingua franca of international law, but presidents, secretaries of state, and generals routinely adopt its terminology to defend their decisions. "It is very difficult in the West nowadays to talk about military action and the use of force without some discussion of justice," says Elshstain, who in 2003 wrote *Just War Against Terror* (Basic Books).

The integration of just-war principles into Western politics, however, is a fairly recent development. Michael Walzer, a professor of social science at the Institute for Advanced Study, remembers that when he was a graduate student,

in the 1950s, political-science departments were dominated by "realist" scholars, who did not believe that ethical considerations were relevant to the study of war. That was relegated to a few Roman Catholic universities and theological seminaries. Walzer credits the war in Vietnam, when opponents of the conflict were struggling to find a language to voice their outrage, for sharpening just-war theory's critical edge and bringing its insights into the mainstream of American political discussion. Walzer was one of the war's critics, and in 1977 he brought out *Just and Unjust Wars* (Basic Books), which has become an influential primer on the theory's evolution, as well as an argument for its wider application.

The origins of Western just-war theory are often traced back to *The City of God*, St. Augustine's monumental fourth-century effort to reconcile Christian ethics with an immoral world. The subject of war posed a unique dilemma for pious Christians: If Christ was the Prince of Peace, were his followers permitted to fight? Opposing the two prevailing philosophical tendencies of his time, pacifism and realism, Augustine argued that war was neither always a criminal act nor inevitable and amoral. Rather, the use of force could be justified by explicitly connecting it to a moral cause, the pursuit of justice.

That approach gave rise to a question that consumed writers like St. Thomas Aquinas and Hugo Grotius: How does one fight to remedy injustice without becoming unjust? In theory the answer was by adhering to a series of injunctions: Responses should be proportional; the rights of prisoners should be protected; noncombatants should be granted immunity; people should have the right to self-defense; and wars of religion, aggression, and conquest should be deemed illegitimate.

However, "while the just-war doctrine has congealed around certain arguments and ideas," Hashmi says, "jihad remains very unsettled." Scholars of Islam stress that jihad is a nebulous and evolving body of thought that is best understood as a broad spectrum of interpretations, ranging from the pacific notion of a struggle against one's lower instincts to the more controversial idea of a holy war against nonbelievers.

"There is a perennial argument that goes on among Muslims about whether jihad is really about war or peace. I guess the short answer is that it is both," explains Michael Bonner, a professor of medieval Islamic history at the University of Michigan at Ann Arbor and author of *Jihad in Islamic History* (Princeton University Press, 2006). In the Koran, "jihad means more than war. It means striving, doing the right thing, going the extra mile, convincing, persuading and, if necessary, fighting," says Bonner.

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The Arabic word "jihad" literally means "striving," as in trying to follow the path of God. Its basic elements were established during the lifetime of Muhammad (570-632). Thus, for example, Muhammad said, "The man who fights in the cause of the Lord may be compared to one who fasts and prays." When the Prophet died, his followers committed themselves to spreading his message. Muslims spoke of that task as jihad, a fulfillment of the Koranic dictate "to make God's cause succeed." Kelsay argues that the debate about honorable combat and the criteria for a just war in Islam grew largely out of that effort -- as did ideas about martyrdom and sacrifice.

The terms of the debate were (and remain) textual. A class of learned and cultivated people, the ulama, quickly emerged to interpret the relevant sources, claiming that their religious knowledge empowered them to discern right from wrong. In this formative period in Islam's history, the Koran used "jihad" to describe efforts to convert nonbelievers -- but not by military force. The verse "Do not yield to the unbelievers and use the Koran for your [jihad] effort to carry through against them" speaks to the persuasive, nonviolent description of proselytization. It was only after the establishment of an Islamic state in Medina, in 622, that jihad began to take on its more explicitly militant character.

The most influential interpretations of jihad were written between 750 and 1400, when Muslim military and political power was on the ascent. Their purpose was to emphasize that Muslims must remain faithful to the moral principles of Islam during the battles of conquest. The discussions covered some obscure terrain -- like whether it is advisable to carry copies of the Koran into enemy territory, and how horses should be properly cared for in battle -- but they also took on fundamental issues of war and statecraft.

There is significant overlap between the Islamic and Western just-war traditions on the matter of applying moral constraints to military conduct, including the consideration of noncombatant immunity, just cause, and restricting the authority of those who have the right to call for the use of force. "You shall not kill -- for that is forbidden -- except for a just cause," reads one often-cited verse from the Koran.

Another point of contact between the traditions is an ethics of emergency that can be adopted in extreme situations. In *Just and Unjust Wars*, Walzer writes about "supreme emergency" -- a term he adopted from Winston Churchill's description of the British predicament in 1939 -- to argue that some situations constitute a crisis of such existential gravity that they legitimate actions that otherwise do not pass moral muster, like the indiscriminate bombing of German cities during World War II. Islamic law has a similar precept: "Necessity overrides the forbidden."

In Western theory, recent discussion has focused on when humanitarian crises like genocide demand the use of military force. But the debate is less heated -- with large areas of consensus on the need to protect civilians, and the illegitimacy of wars fought for religious purposes -- than the one roiling theologians and scholars of jihad. There, the questions are what represents an emergency, and who decides.

The clash of ideas within Islam about the meaning of jihad stems in large part from the militants' claim that Muslims live in a state of emergency brought about by illegitimate and corrupt governments, the presence of a Jewish state on Muslim land, and, more generally, the pervasiveness of Western culture in the Muslim world. In the face of such dire threats, the militants reason, it is the duty of Muslims to rise up and fight. Johnson points to the famous 1998 "Declaration on Armed Struggle Against Jews and Crusaders" signed by bin Laden and al-Zawahiri as a classic invocation of that sort of argument. The document presented a litany of grievances against the United States and, citing the Koran, proclaimed it the duty of every Muslim to "comply with God's order" and take up arms against the United States and the "satanically inspired supporters allying with them."

The scourge of suicide terrorism illuminates the implications of that doctrine and has become the focal point of much of the debate over jihad. The complex, even contradictory, strands of argument can be seen in the thought of the prominent cleric and television personality Sheik Yusuf al-Qaradawi, host of a weekly program on the Qatar-based news network Al Jazeera called *Shariah and Life*.

In 1998, when Al Qaeda bombed the U.S. embassies in Kenya and Tanzania, al-Qaradawi condemned those acts because they had led to the deaths of innocent women and children. He also denounced the September 11, 2001, attacks as a violation of Shariah norms because Al Qaeda had failed to adequately distinguish between military and civilian targets. He did not condemn the suicide attack on the USS Cole, off the coast of Yemen, in 2000, presumably because it was a military target. But there is an exception to that logic: Israel. Al-Qaradawi has famously endorsed Palestinian suicide attacks against the Jewish state, noting that "Israeli society is militaristic in nature," so that "if a child or an elderly person is killed in this type of operation, he or she is not killed on purpose, but by mistake, and as a result of military necessity." Pointedly, he has added, "Necessity makes the forbidden things permitted."

The decision to use military force in Islam has traditionally been made only by publicly recognized heads of state, in

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consultation with religious authorities. But since 1921, when Western powers broke up the Ottoman Empire -- whose ruler claimed to oversee the Islamic world as caliph -- there has been a steady erosion of political and religious authority in the Muslim world. "There is a sense that no postcolonial Islamic state really has an underpinning of universally accepted legitimacy," says Malise Ruthven, author of *A Fury For God: The Islamist Attack on America* (Granta, 2002).

Nevertheless, the manner in which the militants have tried to snatch the mantle of the Muslim just-war tradition rubs up against legal precedent. According to Bonner, "Very rarely have we seen a situation when someone who is not politically powerful -- a king, a sultan -- feels entitled to make a decision about the conduct of either a defensive or offensive war." The fact that none of the signatories of the 1998 "Declaration" are recognized scholars of Islamic law marks a provocative break with Islamic political tradition.

Kelsay traces the intellectual origins of today's jihadists back to the Muslim Brotherhood, a fundamentalist organization founded in Egypt in 1928. At the core of the Muslim Brotherhood's political program was a call for the restoration of Islamic government, viewed as necessary for the establishment of a just social order. Similarly, bin Laden has called for establishing a multinational community of Islam extending from the Arabian Peninsula to Damascus.

The Brotherhood's ideologues -- chief among them its founder, Hassan al-Banna -- considered Muslims' habitual deference to the learned class a vestigial custom that made sense only at a time when most Muslims could not read. By the 1920s, a literate professional class was coming of age, just as developments in print technology were making books widely available. As Noah Feldman, a professor of law at Harvard University, points out in *The Fall and Rise of the Islamic State*, due out this month from Princeton University Press, scholars have never regained their traditional status as the legitimating source of legal authority in Islam. The Brotherhood effectively democratized the interpretation of Islam, carving out fresh political space within Islamic thought for many new voices -- including feminists, who advocated a more liberal reading of Shariah, and opponents of Western culture, like Sayyid Qutb, an extremely influential member of the Brotherhood, who was assassinated by the Egyptian government in 1966.

Qutb's response to the threat from the West was to call for jihad because "the death of those who are killed for the cause of God gives more impetus to the cause, which continues to thrive on their blood." It is in such statements, argues Ruthven, that one can see the extent to which Qutb

imbibed (although never acknowledged) modern ideas from Europe -- totalitarian, anarchist, in some cases Marxist -- to forge a new jihadist ideology. His ideas provided the philosophical rationale for the terrorist groups that assassinated Egypt's President Anwar Sadat, in 1981, as well as for Arab resistance fighters opposing the Soviet Union in the caves of Afghanistan during the 1980s. And it was Qutb's ideas that fired the destructive imagination of bin Laden, who has inflicted them on the world in new and terrible ways.

When Elshtain and her colleagues issued their call for a just war on terrorism, the late Edward Said dismissed their petition as a "pompous sermon" that "augurs a new and degraded era in the production of intellectual discourse." An editorial published in the Iranian newspaper *Resalat* charged the signatories with preparing "the political atmosphere for crimes at the global level." Less hyperbolic was a lengthy essay by three journalists that ran in the pan-Arab newspaper *Al-Hayat*, which rebutted the proposition that "justice" could be reconciled with "war" but still concluded with an outstretched hand: "These observations are presented for the sake of a dialogue that we consider of vital importance."

Despite the refreshingly frank and honest tenor of the discussions that followed at Malta, and in several meetings since, some participants worry that such conversations can easily get lost in a thicket of theoretical abstraction. "It is not just a matter of who has the best ideas," Kelsay readily admits. "There are political and military factors that will help determine the outcome of this argument." In short, philosophical disputes do not take place in a vacuum, but against the backdrop of a real war. "Advocates of democracy in the Muslim world feel that their cause hangs on the conduct of the war on terror," Kelsay says. "They are telling me that American policy has to be consistent with our professed commitment to democratic values."

Abdullahi Ahmed An-Naim is intimately familiar with the struggle for democratic reform in Islam. The professor of law at Emory University is the author of *Islam and the Secular State*, published last month by Harvard University Press. Over the past few years, as he has traveled across a wide swath of the Muslim world arguing that jihad is no longer tenable as an Islamic doctrine, he has grown accustomed to irate people shouting "Allahu Akbar" (God is great) in his face. "The core issue is whether the use of force is legitimate other than in self-defense," An-Naim, a native of Sudan, explains. "Jihad may include self-defense, but historically it has meant more than self-defense. For that reason we should set it aside completely." In its place, he calls on observant Muslims to embrace international law as a more authentic expression of Islam.

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An-Naim says his tenuous position as a reformer has been severely weakened by the war in Iraq: "I rely on international law -- which prohibits the use of aggressive force, which prohibits invading countries -- to say that as Muslims we should understand Islam in a way that is supportive of this humane system." As the credibility of international law has been damaged by what he believes to be America's violation of the charter of the United Nations in the lead up to the war, he has faced increasing condemnation for undermining Muslims' ability to defend themselves against U.S. aggression. "For me this is not a theoretical debate," he says. "It is a personal crisis."

An-Naim's predicament resonates with Khaled Abou El Fadl, a professor of law at the University of California at Los Angeles. Fresh from a trip to Egypt, he says the bookstores in Cairo are brimming with titles about America's use of torture against Muslim detainees at Guantanamo and, most infamously, at the Abu Ghraib prison, in Iraq. American credibility is in tatters. Abou El Fadl cannot even count the number of evenings he has spent in the company of Iraqi refugees who tell the most "unbelievably searing" stories about family members killed by an errant American bomb or a confused and scared American soldier. "Everyone in the Arab world knows these stories."

"One of the weaknesses of bin Laden's approach to fighting is the lack of consistency between his espoused aim of building a just society and his willingness to engage in indiscriminate targeting," Kelsay says in agreement. To expose that hypocrisy, the United States has to fight and struggle "in a way that people see as consistent with the values we wish to defend or promote," he argues. The more suspicious Muslims become about the American failure to adhere to just-war principles, the more "the militants are picking up on that suspicion and exploiting it."

That dynamic is fueling doubt about the viability of just-war ideas in Islam. But Kelsay is standing his ground. In Oman, where he also lectured to a group of Omani diplomats, his contention that the jihad and just-war traditions could serve as the basis for a cross-cultural dialogue on military ethics was met with pointed questions about American foreign policy. Kelsay offered a blunt response: "In a world where wars and rumors of war are all around us, we need ways to establish guidelines."

Evan R. Goldstein is a staff editor at The Chronicle Review.