Offprint from

JERUSALEM STUDIES IN ARABIC AND ISLAM

34(2008)

Ella Landau-Tasseron

**Is *jihād* comparable to just war?
a review article**

REVIEWS

IS *JIHĀD* COMPARABLE TO JUST WAR?
A REVIEW ARTICLE*

This book was written in the wake of September 11, 2001, seeking to explore the Islamic discourse on war. Its purpose is stated in the introduction as being to describe the process called here "*sharī'a* reasoning," i.e. the practice by which Muslim scholars derive laws from their sacred texts and from the examples of the Islamic past. This in turn is done in order "to provide a systematic description of the religious perspectives" of militant Muslims, and to understand the debate about war currently raging between these militants on the one hand, and those who deny that Islam has anything to do with violence on the other (pp. 3–5).

The book comprises six chapters.

Chapter 1, "Sources" (pp. 8–42), opens with three epigraphs: "Islam is peace," (George W. Bush), "Islam is a very evil and a very wicked religion," (Franklin Graham), "Islam is the religion of *jihād* in the way of Allah so that Allah's word and religion reign supreme" (Usama bin Laden). The chapter then proceeds to identify the sources of Islamic political arguments as 1) the story of the rise of Islam, 2) the concept of Islam as the natural religion of humanity 3) the rise of the Islamic empire and civilization. The identification of these sources is given in the form of three different answers to the question "what is Islam"? (hence the use of the epigraphs, see pp. 8, 10). Accordingly, the chapter contains a short account of Muḥammad and the rise of Islam, an outline of the Islamic view that Islam is the natural religion of humanity, and a few words on the early Islamic expansion and its ideology.

The reader may find the account of the rise of Islam somewhat confusing, as it is given concurrently in terms of Islamic sacred history and conventional scholarly history. However, one has to bear in mind that for the purpose of this book, it is not the historical truth that matters, but the ways Muslims told the story. It is these versions that serve as models and infrastructure for political arguments made by Muslims.

The discussion of the view that Islam is the natural religion of humanity follows the Islamic reasoning about the universality of Islam. Islam

---

*This is a review of John Kelsay. *Arguing the Just War in Islam* (Harvard University Press, 2007). 263 pp. including notes and index, no bibliography.

conceives of itself as the best, and the original, religion, the only one acceptable to Allah; therefore all humans have to submit to it. The author omits citing a recent seminal work that deals extensively with the subject.[1]

The early Islamic conquests are described in somewhat anachronistic, misplaced terms. Although there is no doubt that the Muslims saw their religion as the only just order possible, it may well be doubted that, in the seventh century CE, they systematically planned to liberate other nations from tyrannical regimes, as stated here (see pp. 38–39). Rather, their concern was to achieve hegemony and recognition of Islam's superiority. Based on Qur'ān 8:39, 2:193 and 9:40, among others, the goal of the wars of expansion (and of *jihād* in general) came to be defined as "so that religion belong to Allah entirely," and "so that Allah's word reign supreme" (or: "be superior"). Referring to the same Qur'ān 8:39, Kelsay describes the Muslim expansion as "bringing human beings into a right relationship with their Creator," which is "an aspect of the struggle 'to make God's cause succeed' " (p. 38). This is a rather euphemistic way of rendering the actual content of the verse, "fight them until there is no temptation (*fitna*, usually interpreted by Muslims as unbelief) and religion belongs to Allah entirely."

The chapter concludes with an attempt to decide which of three epigraphs is true (p. 40). The author rejects the second ("Islam is evil"), and accepts, with qualifications, the other two: "Islam means peace," and, "Islam is a religion of *jihād* in the sense of struggle" (pp. 40, 41). It seems to me that, since all three epigraphs are obviously polemical and/or have a political agenda, choosing the "right" one cannot be part of a serious scholarly effort. Moreover, the choice is not based on very firm grounds, as explained below.

The author accepts that "Islam means peace" on the basis of the association which he makes between "*islām*" and "*salām*" ("peace"); the association is made because of the derivation from the root *s-l-m* common to both words. Linguistically, the derivation is correct, but the author does not provide evidence that pre-modern Muslim sources ever associate *islām* and *salām*. As far as I can tell, such evidence has not been adduced by other scholars either. By making this association the author interprets *islām* in a way which is compatible with his argument, but is not attested in the Muslim sources. The latter constantly connect *islām* with notions that have nothing to do with peace, that is, with submission (or: surrender, resignation: *istislām*), also derived from *s-l-m*, and with exclusive devotion to Allah.[2] It may be added that the term "*silm/salm/salam*" literally: peace

---

[1] Yohanan Friedmann, *Tolerance and coercion in Islam: interfaith relations in the Muslim tradition* (Cambridge: Cambridge University Press, 2003), especially pp. 34–39.

[2] See e.g. al-Māwardī, *al-Ḥāwī al-kabīr*, vol. 14 p. 106; Ibn Taymiyya, *Majmūʿ al-fatāwā*, vol. 28, p. 174; for detailed discussions of the term *islām* see D. Künstlinger, "*Islām*," "*Muslim*," "*aslama*" im Ḳurān," *Rocznik Orientalistyczny* 11 (1935): 128–37; Mark Lidzbarsky, "*Salām* und *Islām*," *Zeitschrift für Semitistik* 1 (1922): 85–96;

(in the sense of the absence of conflict) may be construed as "the religion of the Muslims," but not the other way around. Thus the verse *udkhulū fī al-silm (salm/salam) kāffatan wa-lā tattabiʿū khuṭuwāt al-shayṭān* (Qurʾān 2:208) is traditionally interpreted as "enter into the religion of Islam and do not follow the Devil" (and not "enter into [a regime of] peace").

The primary meaning of the root *s-l-m*, from which both Islam and *salām* derive, is the state of being safe from harm, as well as the state of being wholesome, free of any blemish (cf. Hebrew *sh-l-m*). It is probably in the latter sense (and not in the sense of "peace") that Allah is called al-Salām; and it is in the former sense that *Islām* is (semantically) understood in pre-modern Islamic sources. Submission involves taking steps to ensure one's safety; submission to Allah — *islām* — is the only way to ensure one's protection from His wrath in this world and the next. The Prophet's warnings at the beginning of his career, reflected in the early Qurʾānic chapters, focus on this idea. Later in Muḥammad's career, and after his death, Allah's wrath in this world was expressed, among other things, by Muslims' attacks on non-believers. The Prophet's address to leaders of his time often concludes with the words *aslim taslam*: "convert to Islam, [only] then you will be safe." To this were sometimes appended threats.[3] The notion of peace as we understand it, namely, the absence of conflict coupled with co-existence with others is thus neither the crux of the name "Islām," nor of the Prophet's request of unbelievers to convert.

Having accepted that "Islam means peace" the author further states that Islam "commands the believers to strive for peace" (p. 40). In order for this statement to be true, the author equates peace with justice, which in turn is equated with Islamic government.[4] This only partly represents Islam's view of itself: indeed, Islam considers itself to be the only legitimate and just social political and religious order. But pre-modern Muslims never thought of themselves as pursuers of peace in the sense mentioned above. Consequently the equation Islamic rule=justice=peace, which enables the author to claim that Islam pursues peace, is alien to the Islamic tradition. Nowhere in the Qurʾān does one find an injunction such as "Seek Peace and Pursue it" (Psalms 34:15). The calls to waging *jihād* (war, not "inner struggle"), on the other hand, are innumerable in the Qurʾān, *ḥadīth*, and other genres of Islamic literature; so are the praises of going to fight in the path of Allah. The author ignores all this material which contradicts his argument that "Islam commands the believers to strive for peace." The

---

D.Z.H. Baneth, "What did Muḥammad mean when he called his religion "Islām"? The original meaning of *aslama* and its derivatives," *Israel Oriental Studies* 1 (1971): 183–90; Helmer Ringgren, *Islām, aslama* and *Muslim* (Uppsala, 1949).

[3] Kelsay refers to these letters in order to show the missionary quality of Islam, p. 37; he does not mention the threats.

[4] See also John Kelsay, *Islam and War: a study in comparative ethics* (Louisville, 1993), chapter 2 where the same technique is applied.

same applies to Qur'ān 47:35 ("So do not falter and call for peace when you are the upper ones"). Ignoring relevant and well known material which is not compatible with one's argument may not be accepted as a sound scholarly methodology.

The interpretation which Kelsay gives the third epigraph, Bin Laden's statement "Islam is a religion of *jihād*," seems somewhat twisted. Bin Laden used the classical Islamic justification of *jihād* against infidels, summarized in the locution "so that Allah's word and religion reign supreme." The ways Bin Laden chose in order to perform *jihād* and make Allah's words supreme are well-known. These do not go well together with Kelsay's paraphrase of the epigraph, which describes *jihād* as a "struggle" aimed at "commanding right and forbidding wrong," and "spreading the blessing of legitimate government" (p. 41). Kelsay does not sympathize with Bin Laden, to be sure; the point he wishes to make is that Islam is peaceful, and the militants misunderstand and distort it. This point becomes clearer the more one reads the book.

Chapter 2, "*sharī'a* reasoning" (pp. 43–96), aims at explaining the development of Islamic law in conjunction with Islamic political history. Out of debates around legitimate government, authority, and the correct interpretation of Allah's will, Muslim scholars started to develop the Islamic law. The chapter is divided chronologically, into "early developments," "formative developments" "the classical theory" and "the modern setting." It proceeds mainly by adducing accounts of scholars and their views.

"Early developments" covers key political events and mentions the names of a few major scholars until the 'Abbāsī revolution (750 CE). "Formative developments" mostly leaves politics aside and concentrates on scholars of the 8th–9th century CE, setting out to illustrate how they worked. On the basis of texts, analogy and sound judgment, combined with piety and good intention, they issued their opinions on legal matters, which necessitated constant effort on their part. The process of deriving laws from texts and debates is here called *sharī'a* reasoning. This section ends with the scholar al-Shāfi'ī and his insistence that all law is based on the Qur'ān and the example of the Prophet (*sunna*), a stance that required even more effort on the part of Muslim jurists. The next section, "The classical theory," reverts to politics. For some reason, relatively ample space is given to the caliph Ma'mūn and the Mu'tazila, although their contribution to the development of the law or to the discourse about war, the subject of this book, is almost non-existent. Perhaps this was the author's way to introduce Aḥmad b. Ḥanbal into the discussion, although he speaks of Aḥmad's political stance — based, admittedly, on the Qur'ān and the *sunna* — rather than on his methodology in law (p. 67). Further, Ibn Rushd (11th century) is discussed as an example of the *sharī'a* reasoning system at its peak. Some remarks on Shī'ī derivation of law end

this section. The chapter concludes with "the modern setting," which is a collection of short accounts of scholars and movements ranging in space from Arabia to India, and in time from Ibn Taymiyya (14th century) to Muḥammad ʿAbduh (20th century).

Throughout the chapter Kelsay chooses to translate *fiqh* as "comprehension," rather than "law," its technical meaning. Thus *uṣūl al-fiqh* become "the sources of comprehension" (p. 68) instead of "the sources from which law is derived." This does not seem to contribute anything to the reader's comprehension of the subject. The reader might have found helpful a simple and straightforward list of the sources of the law and the ways different schools treated them. One of the most important sources of the law, consensus (*ijmāʿ*) is not given much space as such, although reference to consensus among Muslims is made in many places in the book (the term does not figure in the index). The "science of men" (*ʿilm al-rijāl*) is erroneously attributed to the Shīʿa (p. 71 and note 48, p. 122), and the debate about the "sealing of the gates of *ijtihād*" is ignored (it is mentioned in passing much later in the book). This debate is crucial for the evaluation of the current debate on authority and on warfare, which figures prominently in the subsequent chapters. Generally speaking, explaining the development of Islamic law through discussion of a few individual scholars does not contribute to forming a clear, coherent picture of the process. Judging by the endnotes the author is familiar with current literature on *fiqh*; this means that he had at his disposal ready-made descriptions of *sharīʿa* development, yet he chose not to have recourse to them. The last section ("the modern setting") is the least coherent of the whole chapter. Apparently Kelsay's point was to illustrate the popularization of religious knowledge and leadership (e.g. p. 95), but the details of all the movements and their political programs obfuscate this important phenomenon.

In chapter 3, "Politics, ethics and war in pre modern Islam" (pp. 97–124), the author intends to give an account of the "most important political and military judgments advanced by members of the [learned] class between 740–1400" (p. 5). The chapter consists of excerpts and paraphrases from the works of Shaybānī, Māwardī, Sulamī and Ibn Taymiyya, and ends with the author's comment on Shīʿī (Ithnā ʿAsharī) abstention from offensive *jihād* as long as the *imām* is absent. Among other things, Kelsay's purpose is to show the resemblance of rules of *jihād* to the just war tradition, the connection between *jihād* and the political order, and the typical *sharīʿa* balance between the use of precedents and adaptation to new situations.

The reader may wonder about the choice of the scholars cited in the chapter. Shaybānī, already discussed in chapter 2, figures here again (with some overlapping) whereas Shāfiʿī and Ibn Rushd, also discussed in chapter 2, do not. As it happens, these two devote considerable attention to *jihād*.

For example, according to Ibn Rushd, in a specific chapter entitled "why are they (i.e. the enemy) fought?" the purpose of fighting the Scriptuaries (*ahl al-kitāb*, mainly Christians, Jews and Zoroastrians) is to force them to convert to Islam, or to pay the poll tax.[5] Shaybānī, in a passage not quoted by Kelsay, says that idolaters should be called to Islam, "and if they refuse, [the ruler] must fight them; if they say to the Muslims: 'conclude a treaty with us: we shall not fight you and you shall not fight us', the Muslims must reject this, because Allah says "do not falter and do not be sad, when you are the upper ones."[6] This, as well as Ibn Rushd's statements, is unacceptable according to the just war tradition. In fact those rules of *jihād* that contradict the just war tradition are ignored by the author of the book under review. By omitting key passages from the very writings which he consulted, he creates a false picture of resemblance between the two traditions.

The four scholars chosen for chapter 3 differ greatly in their stature, the magnitude of their work, and their historical and political context. For example, whereas Ibn Taymiyya was one of the most important scholars of Islam with scores of volumes to his credit, Sulamī was a rarely cited preacher, hardly known until Emanuel Sivan discussed an epistle of his in 1966; to date the epistle is still in manuscript, and Sivan remains the only source of Kelsay's information about Sulamī.[7]

Since the method followed in the chapter is citing extensively from one scholar after another, disparate issues are lumped together and the reader sometimes goes through the minutiae of specific questions such as "if the enemy shield themselves with Muslims should the fighting go on"? (p. 114). Discussing Māwardī inevitably brings in questions not directly related to *jihād*, such as designation of rulers and governors, and usurpation. Muslim scholars do not usually discuss the legitimacy of government in connection with war, although they do address the question of participating in *jihād* under an unjust ruler. As a famous tradition has it, the Prophet said "do not declare any of your community to be an infidel, even if they perform major sins; pray under any imam and participate in war under every commander."[8] Muslim scholars also generally agree that only a legitimate ruler — even though he may be unjust — has the authority to wage *jihād*.[9] Māwardī is no exception. But, he discusses "right authority"

---

[5] Ibn Rushd, *Bidāyat al-mujtahid* (Beirut, 1995), vol. 1, p. 312.

[6] Sarakhsī, *Sharḥ al-siyar al-kabīr li-l-imām al-Shaybānī* (Beirut, 1997), vol. 1, p. 133. Whether the text is al-Shaybānī's or al-Sarakhsī's is an open question. The reference is Qur'ān 3:139, but cf. 47:35, adduced above, p. 537.

[7] E. Sivan, "La genèse de la contre-croisade: un traité damasquin de début du XIIᵉ siècle." *Journal Asiatique* 254 (1966): 197-224. See now Niall Christie, "Motivating listeners in the *Kitāb al-jihād* of ʿAlī Ibn Ṭāhir al-Sulamī," *Crusades* 6 (2007): 1–14.

[8] ʿAlī b. ʿUmar al-Dāraquṭnī, *Sunan* (Beirut, 1966), vol. 2 p. 57.

[9] E.g. Sarakhsī, *Sharḥ al-siyar*, vol. 1, pp. 110–13, cf. 116–28, 132. Note that ac-

in his book, *al-Aḥkām al-sulṭāniyya*, not in respect to war (as assumed
by Kelsay), but in respect to the constitutional crisis of his time; he dis-
cusses *jihād* as part of the rulers' duty, not "right authority" as part of
the doctrine of war (as does the just war tradition). It is no accident that
the specific chapter on *jihād* in Māwardī's law book *al-Ḥāwī al-kabīr*, (not
cited by Kelsay), does not mention rulers and legitimacy of government.[10]

Discussing Ibn Taymiyya (p. 117 ff) Kelsay emphasizes defensive war,
and war against rebels. These, to be sure, are legitimate kinds of war by
the just war standards; however, Ibn Taymiyya's main concern was not
defense and public order, but victory and "making Allah's word prevail"
by offensive war. In Ibn Taymiyya's explicit words, "each and every hu-
man being must adhere to Islam."[11] This is mentioned by Kelsay only
in passing (p. 118), as are the Mongols and the political circumstances of
Ibn Taymiyya's time (p. 122). The latter are crucial for the understanding
of Ibn Taymiyya's position. The Mongols declared that they were Mus-
lims, but hostilities between them and the Mamluk state continued. Ibn
Taymiyya was asked whether it was legitimate to fight the Mongols, since
they had converted to Islam. In Kelsay's words (p. 122), "in certain opin-
ions he appears to say that such fighting (i.e. against the Mongols) is a
duty for Muslims. Such judgments are put forth with care. . . ." This for-
mulation is misleading. Ibn Taymiyya's fervor against the Mongols cannot
be missed by anyone who reads his *fatwā*s.[12] He considers them to be
outright infidels, his reasoning being that they failed to perform many of
the duties imposed by Islam. By extension, anyone who similarly fails is
an infidel in his view. Ibn Taymiyya thus extended the boundaries of *takfīr*
(i.e. judging another Muslim to be an infidel). In former generations, the
decision as to who is a true Muslim was usually left to Allah (although
polemicists did label one another "*kāfir*"), and the enemies of the legiti-
mate authorities were fought as rebels (*bughāt*) and not as infidels (this is
significant because different and much more lenient rules apply to rebels.
There were of course cases of *jihād* between Muslim states, but this is out-
side our scope). Thus the novelty in Ibn Taymiyya's reasoning regarding
warfare, the fact that he expanded the scope of the enemy category and
his fervor, are obfuscated by Kelsay (see especially pp. 117, 120).[13]

cording to the mainstream Sunnis, a ruler may be both legitimate and unjust; this
possibility is not considered in this book.

[10] ʿAlī b. Ḥasan al-Māwardī, *al-Ḥāwī al-kabīr fī madhhab al-imām al-Shāfiʿī* (Beirut,
1994), vol. 14.

[11] E.g. Ibn Taymiyya, *al-Siyāsa al-sharʿiyya fī iṣlāḥ al-rāʿī wa-'l-raʿiyya* (Kuwayt,
1986), p. 167; *Idem, Majmūʿ fatāwā shaykh al-Islām Aḥmad ibn Taymiyya* (Cairo,
n.d.), vol. 28, pp. 24, 164–65, 626 and passim.

[12] *Ibid.*, pp. 401ff, 501ff.

[13] For Ibn Taymiyya's novelty as well as historical context see Emanuel Sivan, *Radical
Islam: medieval theology and modern politic* (New Haven, 1990); Thomas Raff, *Remarks
on an anti-Mongol Fatwā by Ibn Taymiyya* (Leiden, 1973).

In general, chapter 3 is far from conveying a complete picture of Muslim discourse on war in the period covered here. When discussing non-combatants the author records only traditions banning targeting them; he omits mention of many scholars who allow targeting all infidels on account of their unbelief regardless of whether or not they joined the war effort. This view is mentioned by Ibn Taymiyya, in a passage not quoted by Kelsay.[14] Moreover, many scholars used ingenious *sharīʿa* reasoning to make the ban on targeting non-combatants null and void, again a fact completely ignored by the author of the book under review.[15] Significantly, a typical contemporary *sharīʿa* reasoning issued in the wake of September 11, 2001 (not cited by Kelsay) argues that the attack should not have been carried out, not because non-combatants were targeted, but because of the legal (*sharʿī*) duty to honor treaties:

> This (i.e. the 9/11 attack) was perfidy towards the enemy, because they entered America with a visa, which is a contract of protection. There is no dispute about this among the scholars — even... [if someone] forges the signature of the residents of [the Abode of] War, and they believe it to be authentic, and then he enters their land, he is forbidden to betray them in anything — their lives, their honor, their property, without any distinction between combatants (military) and non-combatants (civilians) among the residents of [the Abode of] War, as long as he remains in their country...
>
> The followers of bin Laden entered America with his knowledge and by his order, and they acted perfidiously towards its people, and killed and destroyed... Then they called their treachery and their perfidy a 'raid' in order to compare their actions to the Prophet's raids. To tie their perfidy and treachery to the Prophet is to diminish him and to mock him, and the punishment for diminishing the worth of the Prophet is well-known to Muslims; Qāḍī ʿIyāḍ mentioned it in *al-Shifā*, and Ibn Taymiyya in *al-Ṣārim al-maslūl*.[16]

Such a typical *sharīʿa* reasoning indicates that the resemblance of *sharīʿa* rules to just war tradition is shallow and accidental: both may

---

[14]Ibn Taymiyya, *Siyāsa* p. 166 and cf. Kelsay p. 118

[15]See Ella Landau-Tasseron, "Non combatants in Islamic legal thought," Center on Islam, Democracy and the Future of the Muslim World: Research Monographs on the Muslim World, Series No. 1, Paper No. 3, December 2006, found at http://www.futureofmuslimworld.com/research/pubID.60/pub_detail.asp. See also below, p. 545.

[16]http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP178507. The speaker is Sayyid Imām, a *jihādī* cleric and member of the global *jihād* movement. My thanks for this reference go to Daniel Lav.

object to the September 11, 2001 attacks, but, whereas the objection of
the just war tradition is based on the principle of discrimination (i.e. the
immunity of non-combatants), Sayyid Imām's objection has to do with the
honor of Islam and the Prophet. Notwithstanding, one may assume that
many Muslims would object to taking innocent lives. They can base their
view on prophetic *ḥadīth*s.

The matter of invitation to Islam before combat is also presented in
chapter 3 in a rather misleading way. Kelsay expounds how the Muslims
are required to bring to the enemy the truth of Islam; if they fail to do so,
their attack is improper and they owe the enemy blood money. Only in
passing does he mention that Māwardī distinguishes between "those who
have received the call to Islam but rejected it... and those whom the call
to Islam has not reached. The former are subject to attack or the threat of
attack at any time..." (pp. 113–114). Kelsay omits to mention the wide
consensus among Muslim jurists that "to date there isn't anyone who has
not heard about Islam"; consequently no attack against infidels may be
considered improper. This was an ingenious *sharīʿa* reasoning devised as
early as the second/eighth century in order to exempt the Muslims from
the duty to invite the enemy to Islam.[17] All this having been said, one
must also remember that since the sixteenth century, the just war tradition
excludes religion from the list of legitimate causes of war.

The Islamic discourse on war includes the view that Muslims are en-
titled to possess all enemy property (unless they have a treaty with the
enemy), based on the Prophetic tradition "I was sent with a sword shortly
before the Day of Judgment, my livelihood was placed under my lance,
disgrace and humiliation are the lot of those who oppose me."[18] This, too,
does not tally with the just war tradition and, again, it has no trace in the
chapter. Also ignored is the duty of Muslims to humiliate the *dhimmīs*,
based on Qurʾān 9:29. This duty is mentioned in all law books.[19] Stating
that "their (i.e. Jews and Christians) difference in religion is not itself a
justification for fighting" (p. 120), the author ignores the fact that this is
so only if these Jews and Christians submit to Islam, pay the humiliating
tax and abide by the restrictions imposed on them. Otherwise, fighting
the infidels because they differ in religion is precisely what the Muslims
are commanded to do.[20]

---

[17]E.g. Abū Yūsuf, *Kitāb al-kharāj* (Beirut: Dār al-maʿrifa li-l-ṭibāʿa wa-'l-nashr,
n.d.), p. 191. On the comparison drawn between *jihād* and just war, see further below,
p. 548.

[18]E.g. Sarakhsī, *Sharḥ al-siyar*, vol. 1, p. 13.

[19]See U. Rubin, "Qurʾān and poetry: more data concerning the Qurʾān *jizya* verse,"
JSAI 31 (2006): 139–46.

[20]E.g. Qurʾān 2:193 (war is to be stopped only if "they cease," usually interpreted
as cease to be infidels, i.e. convert to Islam), 9:5. Ibn Taymiyya, *Siyāsa*, p. 167; *idem*,
Majmūʿ fatāwā, vol. 28, pp. 164–65, and elsewhere.

Chapter 4, "Armed resistance and Islamic tradition" (pp. 125–154), discusses arguments offered by Muslims in justification of armed resistance to superior powers. The pre-modern arguments, says Kelsay, were modified by the militants so as to apply to contemporary situations, but this modification resulted in intra-Muslim controversy (p. 6).

The chapter starts with the decline of Islamic power since the 18ᵗʰ century under European colonialism, and later under U.S. pressures. The Wahhābī movement in Arabia, and Shah ʿAbd al-ʿAzīz in India, provide early examples of the justification of armed resistance to the ruling power (in the former case it was the Ottomans, not Imperialism, that was the object of resistance). The focus of the chapter is, however, on contemporary militant Islamic groups: The Egyptian Jihād movement (not mentioned here by name), responsible for the assassination of president Anwar al-Sadat in 1981; the Ḥamās in Palestine; and the World Islamic Front (which includes Bin Laden's al-Qāʿida). Kelsay notes the differences between the three: The Jihād in Egypt rose against an Islamic government, the Ḥamās fight what to them is foreign occupation, and the World Islamic Front is conducting total war for the removal of what they think to be corruption, and the establishment of a global Islamic state. However, the three movements have much in common.

Each of these movements has a fundamental text outlining its ideology, and these are discussed in the chapter: the document called *The Neglected Duty (al-farīḍa al-ghāʾiba)*, justifying the Jihād's actions against the Egyptian regime; the charter of Ḥamās, explaining their struggle against Israel, and the *Declaration*, justifying global *jihād*. All three have to justify not only their cause but also their means, which include suicide bombings and the killing of civilians. Kelsay's explanations of these documents provide the reader with a clear idea about their reasoning. The chapter ends with illuminating observations on the crisis of both political and religious authority in the modern Islamic world.

A novelty in this chapter as compared to the previous ones is that ample space is given to counter arguments raised by Muslim opponents of the above-mentioned movements. The criticism has to do mainly with the means these movements use, and the controversy involves various opinions about political and religious authority. All the partners to the debate, of course, base themselves on Islamic law. The more striking novelty, however, is that Kelsay, after having observed that *sharīʿa* reasoning inevitably produces (or reflects) different opinions, raises the question "who is right" in this specific controversy. Moreover, he takes sides. He personally argues with the militants on *sharīʿa* grounds, criticizes them for their lack of formal *sharīʿa* education (p. 137), argues that they have no precedents to rely on (p. 132), and refers to them as such "who style themselves inheritors of the mantle of the *sharīʿa*" (p. 129). In fact he touches here

upon a new phenomenon of which he obviously disapproves, namely, the
popularization of both religious education and the right to issue *fatwā*s.
If an outsider is to judge this phenomenon at all, it may be pointed out
that it has a positive side, namely, "the lay Muslims' willingness to inter-
pret Islam in contradiction to the radicals and even to issue "lay *fatwā*s"
against them."[21]

Examples of the author's judgment of Muslim legal opinions are the
following. Yūsuf al-Qaraḍāwī, the famous cleric, argues that Israeli society
is militaristic, therefore all civilians are legitimate targets, in contradistinc-
tion to civilians of other states. This is judged by Kelsay as "a stretch of,
if not outright departure from, *sharīʿa* precedents" (p. 141). Bin Laden's
argument that all citizens of democratic states are legitimate targets be-
cause they are responsible for electing their evil governments is considered
here to be inconsistent with *sharīʿa* norms of honorable combat (pp. 143–
44, see also 152–3). These judgments are unwarranted, if only because the
logic of Qaraḍāwī and Bin Laden tallies perfectly with *sharīʿa* reasoning.
In classical Islamic legal treaties one finds that any non-combatant who
assists, or is **capable of** assisting in any way the war effort, is a legitimate
target. Thus an old man who still is in possession of his faculties could
give counsel to the combatants and consequently he himself counts as a
combatant. The same applies if he is capable of shouting, since he could
warn the enemy with a shout. He is therefore a legitimate target regardless
of whether or not he actually shouted.[22] Regarding all Israelis as enemies
is therefore completely logical on *sharīʿa* grounds, as is considering all
citizens in a democratic society as enemies, because they participate in
the (so-called) crimes of their government merely by electing them and by
paying taxes. Fortunately, the creativity of the Islamic tradition can ac-
commodate also different views, which are actually held by most Muslims
across the globe. Contrary to Kelsay's claims, the views of the militants
are illegitimate not by *sharīʿa* standards, but by international ones, which,
in the modern world, should apply to all.

Chapter 5, "Military action and political authority" (pp. 155–197), fur-
ther pursues the current controversy over legitimate political and religious
authority among Muslims. The author raises the questions, who has the
right to make political decisions (including those pertaining to the use of
force)? Whose argument is correct in terms of the *sharīʿa* (see also p. 6). A
new group of critics is introduced into the discussion, namely, the liberal, or
democrat Muslims as they are called here. Like the militants and their or-
thodox critics discussed in the previous chapter, moderate, democratically-
oriented Muslims rely on the *sharīʿa* for support of their political, social

---

[21]Shmuel Bar, *Warrant for terror: the Fatwas of radical Islam and the duty to
Jihad*,(Lanham, Md.: Rowman & Littlefield, 2006), p. 99.
[22]See note 15 above.

and religious vision. The Muslim democrats, however, depart from the
orthodox critics in that they criticize not only the means but the very
vision and program of the militants. Kelsay surveys the views of some of
these critics in detail: Abd al-Aziz Sachedina, Maḥmūd Muḥammad Ṭāhā,
ʿAbdallāh al-Naʿīm and Khalid Abou al-Fadl. These reformers offer new
interpretations of the Muslim past and of the Islamic sacred texts with a
view to harmonize Islam with the values that originated in the Western
world. For example, Ṭāhā suggests that contemporary Muslims should
follow the example of the Prophet's conduct in the Meccan period, which
was peaceful, rather than in the Medinan one (p. 175) which saw all the
Prophet's military campaigns. Sachedina holds — contrary to the mili-
tants — that the precedent of the apostasy wars (632–633 CE) is not valid
in the contemporary world: the caliph Abū Bakr was right in deciding to
fight dissenting tribes, because the security of the Muslim community was
put in jeopardy at that time. Contemporary circumstances are different;
therefore Abū Bakr's judgment does not apply today. Sachedina interprets
the Qurʾān as advocating freedom of conscience and human rights, e.g. in
10:99, "And if your Lord had willed, whoever is in the earth would have
believed, all of them, all together. Would you [Muḥammad] then constrain
the people until they become believers?" (p. 168). Al-Naʿīm supports the
separation of religion and state and argues that such separation was the
norm in Islamic history immediately following the death of the Prophet.
Chapter 5 is interwoven with the counter-criticism of the militants (in-
cluding repetitions of previous material, from chapter 4, e.g. p. 194) to
whom, the author reminds us, the democrats' arguments are nonsensical
and corrupt.

The reader may find the reformers' interpretations original and inter-
esting, if sometimes perplexing. For example, they call upon Muslims
to align themselves with Jews, Christians and others in the promotion
of democracy (p. 198), although the Qurʾān explicitly forbids Muslims to
align themselves with infidels (e.g. 9:23, 60:32).[23] Sachedina flatly denies
that the purpose of *jihād* is to establish the hegemony of Islam over other
religions (p. 173) although this purpose is stated in every pre-modern chap-
ter on *jihād*. Abou El-Fadl criticizes the Wahhābī scholars and militant
Muslims for their selective use of sources, while advocating the freedom
to choose from a wide variety of precedents, which amounts precisely to
the same (see pp. 184 and 187–88 as compared to p. 185). Al-Naʿīm's
argument that religion and state were separated immediately after the
Prophet had died plays right into the hands of the militants whose model
is precisely the Prophet, not his posterity. Further, al-Naʿīm adduces the
Fāṭimīs and Mamlūks as models for his vision (p. 181), but these have

---

[23]Ibn Taymiyya, for one, vehemently opposes such alignment, see e.g. Ibn Taymiyya,
Majmūʿ fatāwā, vol. 28, pp. 190, 209, 228.

never been examples of an ideal Islamic Sunni state. The reformers, as well as the author of the book under review, know that theirs is a minority position which would have been rejected by pre-modern Muslim scholars (pp. 174, 197).

The reader may find the arguments of the democrats appealing, elaborate and ingenious. By contrast, the arguments of the militants are straightforward, as the following examples (taken from outside of this book) will show.

The *jihādī* cleric Sayyid Imām cites Qur'ān 9:5 and 9:29 as commanding offensive *jihād* ("Fight idolaters wherever you find them. . . " and "Fight those who do not believe in Allah. . . ") as do a number of prophetic traditions. Consequently, he says, one who denies that offensive *jihād* is part of Islam — for instance, those who say that Islam only fights in [self]-defense and in order to repel aggression — is denying the Divine scripture and Prophetic tradition; such a person is an unbeliever according to Qur'ān 29:47: 'None deny my signs (or 'verses' — *āyātinā*]) but the unbelievers."[24] Arguing against democracy, the same cleric writes that "legislating laws for created beings is among those activities of Allah that, if not attributed to Allah and Allah alone, one's belief in His unicity is deficient. . . Thus one who, in Allah's stead, legislates to people, has made himself a partner to Allah in His Lordship and Divinity, and has set himself over the people as a lord, and in this he has committed apostasy."[25]

These arguments, unacceptable by Western standards, are perfect illustrations of *sharī'a* reasoning, perhaps much more so than the democrats' arguments. To this, however, Kelsay would not agree. All through the chapter, the author is involved, answering the question "are the militants right?" (raised on pp. 6, 164) with an unequivocal "no," purportedly on *sharī'a* grounds. Again and again he tells the reader that the militants are in error in Islamic legal terms, that they subvert the purposes of Islam, that they base their judgments "on a book or two" instead of doing the "hard work," that they violate the *sharī'a* and fail at the very practice of *sharī'a* reasoning (pp. 173, 181, 187, 193, 195–96, 198). Moreover, he seems to be telling the Muslims what they should do (e.g. pp. 176, 177 — "it must never be said that the *sharī'a* was closed" — 178, 181, 183). Sometimes, however, it is not clear whether he paraphrases the democrats or writes his own piece, but the reader is left with a clear impression as to the stance of the book.

Chapter 6, "Muslim argument and the war on terror" (pp. 198–224),

---

[24]Daniel Lav, "Jihadist approaches to jurisprudence viewed through the lens of the Egyptian 'Revisions' movement," (forthcoming in *The evolution of political Islam* [Westport: Praeger Security International, 2009]); the passage is cited from the section "General principles of *takfīr*: the dispute over *jaḥd* and *istiḥlāl*."

[25]*Op. cit.*, cited from the section "Public-sphere *takfīr*: forsaking rule by Allāh's law; legislation as a form of polytheism."

tries to evaluate the prospects of success of the conflicting arguments.
Which argument will win, says the author, depends on the ways vari-
ous Muslim groups assess their own political situations, and also on the
conduct of the United States and its allies: if these conduct themselves
unjustly or are perceived to be doing so, the Muslim democrats' argument
is likely to fail.

Most of this chapter is dedicated to criticism levelled at the United
States policies and conduct, for which purpose no other than Ahmadinejad
is recruited, among others. Kelsay devotes several pages to Ahmadinejad's
public letter to President George W. Bush (pp. 205–216), which stands for
criticism raised not only by Iranians but also by "the young of every nation
on Earth" (pp. 213–14).The author's sympathies of course do not lie with
the Iranian president, whose policies and conduct he criticizes in turn (p.
220). His point is to adduce various points of criticism of the United States
in order to argue that the success of Islamic reforms hinges on the conduct
of that country. The criticism the reformers level at the United States
is expounded too, and the West is urged to listen to them in order that
Muslim democracy may succeed.

If "one of the purposes of this book is to provide a systematic descrip-
tion of the religious perspectives" of militant Muslims (p. 3), the book is
far from achieving it. The praises of warfare in the path of Allah, sung in
numerous Qur'ānic verses, *ḥadīths* and other genres of Islamic literature
form a major part of Islamic discourse on war, but there is no trace of
them in Kelsay's account. As Ibn Taymiyya writes (in a passage not cited
in this book), warfare in the path of Allah is considered to be a sublime
act of piety.[26] This is undoubtedly the religious perspective of the mil-
itants, best reflected in the document written by Muḥammad ʿAṭā, the
commander of the September 11, 2001 attack (not cited in this book).

The near-equation made by Kelsay in this book and elsewhere between
jihād and the just war tradition, suffers from major flaws. To begin with,
pre-modern Islam never "argues the just war," and in modern Islam it is
argued only under the influence of the West, mainly apologetically, with
the purpose of changing the image of Islam in foreign minds. Pre-modern
Islam did argue *jihād* and legal warfare, but their ideas are different from
the just war tradition. An infidel is by definition an enemy, "infidelity
and enmity are united in the person of every infidel," and, "each and ev-
ery human being must adhere to Islam," for which purpose the Muslims
are commanded to initiate war, says Ibn Taymiyya.[27] The only ones who
seem to have objected to war on humanitarian grounds were certain Ṣūfīs,

---

[26]Ibn Taymiyya, *Siyāsa*, pp. 161–65; *idem*, *Majmūʿ fatāwā*, vol. 28, pp. 417–23, 440,
vol. 35 p. 160; similar motifs are to be found throughout the Islamic sources.

[27]*Al-kufr wa-'l-muḥāraba muwaḥḥadāni fī kull kāfir*, Ibn Taymiyya, *Majmūʿ fatāwā*
vol. 20 p. 99, see also vol. 28 p. 648, vol. 31 p. 380. ʿAlā jamīʿ al-khalq an yadīnū bi-dīn
al-Islām, ibid., vol. 28, p. 24.

utterly despised by Ibn Taymiyya.[28] Furthermore, the words ascribed to the Prophet, "do not kill a child or a woman," are repeated in Islamic law books and create the impression of similarity to modern international law; yet a contemporary Islamist makes a point of contrasting the doctrine of *jihād* with the international law of war, since the former require the initiation of hostilities and the taking of others' land.[29] And this is the second major flaw of the comparison. It will be recalled that the main achievement of the just war tradition was to remove religion from the list of legitimate causes of war (in the sixteenth century). The goals of *jihād*, rendered by Kelsay as expansion for establishing peace and justice under Islamic rule (and variations thereof) are definitely illegitimate by the standards of the just war tradition. While Islam is, to Muslims, the only just and valid order, they never suggested that it equals peace. It is Allah's will which must be established over all humanity. Allah's will is to a great extent a matter of interpretation; however, it was never interpreted as "peace" in the sense that the just war tradition understands it, namely, co-existence with and respect for others on equal terms. In Islam, such peace is only imperative within the boundaries of the community.[30] And while the purpose of the just war rules is to limit both the occurrence of war and its damages, the purpose of the laws of *jihād* is not to limit its occurrence, but to conduct it so that the Muslims be victorious. Pre-modern Muslims realized that complete victory over the entire world was unfeasible, hence the tradition attributed to the Prophet, "There will always be a group of my community fighting for the truth, victorious, until the Day of Judgment."[31] If there is some resemblance between specific rules pertaining to both traditions, it is superficial, and does not usually spring from similar principles and ideas. For instance, the just war insistence on right authority sprang from the need to limit violence, mainly banditry, in the fragmented medieval European world. The Islamic ruling that it is up to the sovereign to wage *jihād* is an expected stance of a centralized state that aspires to secure its exclusive right to use force.

It appears that the main purpose of the book is to prove that the militants' interpretation of the Islamic texts and past is wrong, not only in terms of moral and humanitarian values but also in terms of Islam itself. In Kelsay's view those Muslims who are moderate and oriented towards democracy hold the true interpretation of Islam. This view involves some difficulties.

---

[28] *Ibid.*, vol. 10, p. 510.

[29] The reference is to the jihādist Sayyid Imām, see Daniel Lav, "Jihadist approaches to jurisprudence" in the section "Sayyid Imām's *tarshīd al-ʿamal al-jihādī* and its critics." Such material is not adduced in the book under review.

[30] Peace within and without the community are disparate issues, constantly mixed up in this book.

[31] Ibn Ḥazm, *al-Muḥallā bi-'l-āthār* (Beirut: Dār al-Afāq al-Jadīda, n.d.), vol. 1, p. 9.

First, it is inconsistent. Having observed that *sharīʿa* reasoning is about adapting to new situations (pp. 125, 187 and *passim*), the author rejects the militants' efforts at making such adaptations as incompatible with the *sharīʿa*, and accepts the democrats' interpretations even though the latter sometimes contradict outright sacred texts. And, having conceded that there is a multitude of precedents from which to choose (p. 184, paraphrasing Abou El-Fadl), and that variety of opinion is a necessary by-product of *sharīʿa* reasoning, the author sets out to remove this plurality by deciding which of the various opinions is right. Similarly, having observed that Islam is a living tradition (e.g. p. 124), Kelsay contradicts himself by passing a negative judgment on the creativity of some scholars (among them autodidacts), and by criticizing an Islamic argument for lack of direct precedents (p. 132). The very point of a "living tradition" is the reinterpretation of precedents. How well the Jihād movement performs this undertaking may be learned from Emanuel Sivan's *Radical Islam* (not quoted by Kelsay).[32]

A second difficulty is that the Muslim democrats' views are not at all popular among Muslims. Many of these reformers — only four of whom were discussed here — live outside the Islamic world. One of those discussed in the book, Maḥmūd Muḥammad Ṭahā, was charged with apostasy and executed. Obviously, it would be difficult for liberal Muslims to lead reforms or make their elaborate interpretations prevail. That being said, one must remember that the militants, too, form a minority. The majority of Muslims and Muslim states do not act towards converting the entire world to Islam, certainly not by violent means.

Thirdly, and finally, taking sides in an intra-Muslim controversy seems unwarranted. A Muslim must choose one way to follow, for he obviously cannot follow various, contradictory paths at one and the same time. Such a believer is also free to interpret his own tradition in order to defend his choice, and in the process he may accuse other Muslims of distorting the tradition. This is precisely what *sharīʿa* reasoning has always been about. However, *sharīʿa* reasoning is not a practice to be undertaken by an academic historian, however noble the motives. From an academic point of view, the book under review is not a good piece of research.[33]

Ella Landau-Tasseron

The Hebrew University of Jerusalem

---

[32]See reference in note 13 above.

[33]Some further errors in the book must be corrected: p. 13: "Syria" in Arabic is *al-Shām*, not *al-shams*; p. 15: members of tribes are in no way clients, not even in inverted commas; p. 22 penult: the Meccans were not at all isolated and defeated, on the contrary, their allies surrendered to Muḥammad only after Quraysh did; p. 102: the word *mukaffirūn* does not exist in the sense of infidels; p. 126 and throughout chapter 4: the author of *The Neglected Duty* is Muḥammad ʿAbd al-Salām Faraj, not "Muḥammad al-Faraj."