The Author Responds

John Kelsay

Introductory Remarks

Let me begin with thanks to Simeon Ilesanmi for organizing this collection of papers. As well, I’m grateful to the editors of the Journal of Church and State for agreeing to consider a focus on my book. And I appreciate the efforts of colleagues who wrote papers.

I want to respond to points made in each paper. I shall organize my remarks around two questions to which I am often asked to respond. Both correlate with an interest in global religion, or in what happens to religions in connection with processes like the ones we now speak of in terms of globalization. These are not questions directly addressed in Arguing the Just War in Islam. They do, however, impinge on the material presented there. And they open up some broader, more comparative conversations that I consider important. Specifically, I shall try to describe (1) the conditions that lend themselves to the formation of frameworks like the just war and jihad traditions; and (2) the conditions that lead groups of people, seemingly dedicated to or at least strongly influenced by such traditions, to claims of exception—that is, to say that those fighting may be allowed to bend or override established rules of war. I’ll talk about each of these questions, and along the way will respond to points made by Professors Davis, Ilesanmi, Johnson, Oh, and Tibi.

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1. Since some of the papers formed part of a panel sponsored by the Comparative Ethics Section during the November 2008 meeting of the American Academy of Religion, I should also thank my colleague Barney Twiss for his work organizing and moderating that panel, as well as Aaron Stalnaker and other members of the Steering Committee for the CRE Section.
Relative Success and Political Responsibilities

First, then, to the question about the conditions that make for just war thinking. It is worth noting that the question grants at least one point I have stressed over the last twenty years, which is that the Christian and Muslim modes of discourse we know as “just war tradition” and “the judgments pertaining to armed struggle” are strongly analogous. Not everyone grants this. More than one colleague, upon reading one of my pieces, has commented, “Well, the differences strike me more than the similarities.” I’ve always thought that the notion of war as a rule-governed activity was pretty much a universal phenomenon. Insofar as that is correct, we ought always to expect human beings in various places and times to invoke some ideas about legitimate authority, just cause, and right intention—this last tied in some sense to the way war is conducted—in connection with military activity. One interesting question for comparative ethics then follows: How do groups of people fill in the blanks? How do they come to think of legitimate authority, for example? How do norms that distinguish honorable from dishonorable fighting emerge? Even more, how does the substance of these criteria change? In one sense, Arguing the Just War in Islam is intended as a description of the way participants in one tradition, Islam, have filled in the blanks and how they continue to do so. The practice of Islamic jurisprudence, or as I suggest we say it, Sharia reasoning, provides a frame of reference by which we can analyze the positions of various contributors.

Now, the question seems to be about origins. What gets the engine of just war or jihad thinking started? More specifically, it makes use of the terminology of “conditions.” Those who ask it sometimes suggest that religious intellectuals feel the need to make notions of religious and moral perfection apply to the messy world of power politics and thus create frameworks like just war and jihad. It’s a great and large question, worthy of those scholars who remain, in my view, singularly important in setting the terms of comparative religious ethics—I mean, of course, Max Weber and Ernst Troeltsch. Following their example, I think we should put the matter just a little differently. Instead of talking about making notions of religious and moral perfection apply to the messy world of power politics, I think we should talk about communities that embody a universal or global aspiration, and whose history indicates relative success in that regard. Christianity and Islam sought to bring all humanity into a certain kind of relation. Their success in this regard brought power, and with it responsibilities. The frameworks of just war tradition and ahkam al-jihad thus
constitute major achievements with respect to the need to construct a political ethic.

In the case of Christianity, the vision of a universal community was present at least from the time of Paul’s description of himself as the apostle to the Gentiles. The letters to the Galatians and the Romans provide evidence of this, though perhaps the best formulation came from that admirer of Paul who wrote the letter to the Ephesians: Christ made peace between Jews and Gentiles; “in his flesh he has made both groups into one and has broken down the dividing wall” (2:14). The resulting development by which some aspects of Second Temple Judaism were made into an ethical monotheism joined to the myth of a descending and ascending redeemer correlated with this vision of a tranethnic, global community. And when the Roman imperium moved to establish Christianity, the way was clear, or perhaps it was even a necessity for Ambrose and Augustine to effect a further transformation, by which the bellum iustum of Rome was fused with biblical motifs in ways we recognize as basic to just war thinking.

In the case of Islam, there is much we do not know. Given our present understanding, we are justified in saying that the vision of universality was present from the earliest stages of the Medinan period—say, from the point when Muslim disaffection with the Jewish tribes of that city provided the context for the change in the qibla or direction of prayer. But the articulation of this vision came slowly, and we should probably not look for its full expression much before the 740s, in connection with the Abbasid revolt. The vision of universality developed at that point was different from that of Christianity, not least in the fact that it established a framework of ongoing regulations for those who did not join the community of faith. In that sense, the Muslim mission established government first and hoped religious unity would come later. For our interests, however, the point is that in this setting where power was joined to a vision of universal world order, Islam developed its political-military ethic. In effect, jurists working in and near the Abbasid capital in Baghdad joined an ethic of reciprocity inherited from the tribes of the Arabian Peninsula with patterns of political and military organization characteristic of Byzantine and Sassanid polities, then put both of these sources into a framework in which right and wrong were defined by the obligation to conform to God’s law.

All this suggests that Christian and Muslim intellectuals engaged in something like the kind of activity Jeffrey Stout once described as bricolage; in the same vein, Jim Johnson on more than one occasion has described the development of just war thinking in terms of the gospel text which describes every scribe fit for the kingdom of
heaven as bringing together what is old and what is new. Thus, in my view it was the relative success of Christianity and Islam with respect to their notion that humanity should be joined together in a global community that made their adherents attentive to the demands of political responsibility. They found a variety of tools available to them and made use of those to construct the political-military doctrines we call just war and jihad traditions. Several lines of inquiry follow from this, and sustained work on them would yield valuable contributions to scholarship. For example, just what happens to the ethic of reciprocity characteristic of the Arab tribes when it is placed on a divine law footing? Or again: what happens to the legacy of Rome in the case of *ahkam al-jihad*, and how different is Muslim appropriation of that legacy when compared with the kind of thing Christians constructed? And so on.

**Exceptions in Just War Thinking**

Our second question asks about the conditions in which people start talking about exceptions to established just war norms. In contemporary Islam, we find people citing the maxim that “necessity makes forbidden things permitted”; people who ask this question are typically wondering about suicide bombings and other “irregular” tactics. In responding to this question, I want to pick up on Jim Johnson’s comments about *jihad* as an individual duty.

First, a clarification. As Johnson observes, the appeals to necessity, and also to *jihad* as *fard 'ayn* are characteristic of contemporary resistance movements. But these movements employ these appeals in a very distinctive way. On my account, at least, al-Qaida and related groups do NOT make use of these appeals in order to override norms related to targeting civilians or governing the use of certain weapons or tactics. When Osama bin Ladin and others are asked, “Why do you violate the orders of the Prophet, killing women and children along with soldiers?” they do not say “because our backs are against the wall.” Instead they say, “Our enemies kill Muslim women and children, and we are entitled, perhaps even obligated to respond in kind.” They cite texts reminiscent of norms of reciprocity, for example Qur’an 2: 190ff: “fight them as they fight you,” and interpret these to mean “If your enemies violate established norms, you pay them back in kind.”

Where, then, do appeals to necessity or *jihad* as individual duty come in? They do so in connection with resort to war and in

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particular with respect to the criterion of right authority. These appeals thus justify fighting by a vanguard, even when it lacks official sponsorship. In an emergency—that is, when jihad becomes an individual duty akin to prayer and fasting—a woman may fight without the permission of her husband or father and a child may fight without the permission of its parents, or more typically, an individual believer or group of believers may fight without worrying about whether an established government provides authorization. The conditions that constitute an emergency and thus give rise to exceptions have to do with the judgment that the ordinary lines of command and control do not exist or have been corrupted. The necessity and “individual duty” appeals justify popular uprisings rather than irregular tactics.

So—Johnson is correct to say that the appeal to jihad as individual duty implies a kind of mass uprising, in which any and every Muslim able to do so is exhorted to join in the fighting. The contrary view he mentions from my book flows from an attempt to make sense of some other trends in Muslim thinking about resistance. In these trends, the idea is that even in an emergency, there must be some vestiges of justice remaining in the established system of command and control. These vestiges may not be ordinary; they may involve some twists and turns. Nevertheless (so the argument goes), some notion of competent authority is necessary if one is to prevent anarchy. In the case of Saladin and resistance to the crusaders, my reading is that Saladin, who was primarily a military leader located in the north of Iraq, received or at least claimed authorization from the Abbasid caliph for purposes of leading an army into Syro-Palestine. Someone like al-Sulami (d. 1106) understood this in terms of fighting as an individual duty, in the sense that (1) Saladin, as the caliph’s sultan or “minister of power,” could call on Muslims from anywhere to join him in repelling the enemy; and (2) such intervention was made necessary by the fact that the governor of Syro-Palestine was demonstrably unable to mount any effective resistance on his own. If one likes, there is a Muslim version of the principle of subsidiarity at work. Those closest to the trouble should handle it, but if they cannot, their peers in neighboring contexts do so.

In a similar vein, one hears some contemporary voices putting forth the notion that Osama bin Ladin and his colleagues are claiming too much for themselves. If they are authorized to fight the American and allied forces, they do so because they are designated by some legitimate authority. Otherwise, jihad as individual duty really does mean that anyone, anywhere who believes he or she has a righteous grievance can organize a private militia and attempt to impose his or her will. In one case I consider, and
which is crucial to the argument, one finds Saudi clerics, well known for their dissent from the policies of the royal family, who say that bin Ladin and those with him are wrong to fight without authorization. The model of resistance, they say, is something like what happened in Chechnya, where Saudi believers responded to members of the royal family and went to the aid of beleaguered Muslims.

Now, what to make of all this? As Johnson suggests, scholars have a lot of work to do. In Arguing the Just War in Islam, I chart the various arguments by using a distinction developed by Quentin Skinner in his attempt to describe arguments about resistance among sixteenth-century Protestants.3 One line of thought understood resistance in terms of a private right of self-defense. The tyrant is after my life and my property, and so is a kind of thief. In that case, I am justified in using all means at my disposal to resist.

Another line of thinking saw resistance as orchestrated by lesser magistrates and thus might be described as a constitutional theory. The best known expression of this argument is Calvin’s in Institutes IV. 20. Skinner understands it as an attempt to delimit the obviously anarchic implications of the private right appeal. After all, if resistance rests on private rights, it also then rests on private judgments. And who is to say, other than me and those with me, when the imposition of public authority really constitutes a threat? Is it when the government tries to collect excessive taxes? How much is excessive? Is it when the government tries to draft my son for military service? And so on.

As Skinner tells the tale, Protestants ultimately could not resist the power of the private right argument. They had no answer to the question “Who authorizes resistance, if the constitutionally designated authorities fail to do so?” Even so, Osama bin Ladin’s argument is that the designated authorities have failed to do their jobs. He recognizes the problems of his position, which is one reason why, in a speech given in 2005, bin Ladin decried the Taliban’s loss of power in Afghanistan. Recognition of and support for their regime allowed bin Ladin to present himself as the military arm—the sultan, if you will—of a head of state. Without such a state, he and those with him continue in the moral twilight zone of those who exercise a private right of self-defense.

The Question of Democracy

These questions about global religion also point to some of the concerns raised by Irene Oh, Simeon Ilesanmi, and Bassam Tibi. Is there

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something about the political and other processes associated with globalization that gives rise to movements ready to violate established conduct of war norms? My answer is, yes. Further, I think we should say that such movements, while certainly responding to globalization in ways that are understandable, are nevertheless reaching for solutions that are probably not viable. Bassam Tibi argues that the religio-political program of militant Muslims is a step backward rather than a step forward. While I might not put it in precisely those terms, I do think that the vision of a state governed by divine law does not fit well with important features of contemporary societies.

As Max Weber concluded his studies of capitalism, he described it as a relentless force, destined to become a global system. He meant, of course, to describe the way profit-driven capitalists are always looking for markets, and always seem to find people in new settings willing to work with them. To really appreciate Weber's comment, however, we need to keep in mind that when he said "capitalism" he did not mean something "merely" economic. In Weber's terms, capitalism always suggests a particular way of structuring human social relations—interpreters of Weber such as Parson and Luhman described this as the "differentiated" society, in which various spheres of activity stand more or less "on their own feet." So economic or business activity is regulated by norms intrinsic to business practice, rather than by norms directed at religious goals; politics comes to be a practice of an ethic of responsibility driven by reason of state, rather than by notions of "man's final end"; and so on. In this vein, one can certainly say that religions have a place in both private and public life. But they do not dominate, and in particular, no single religion may have a monopoly on normative discourse. Plurality is the name of the game, and the practice of compromise, of give and take among people with varying religious commitments, is necessary if human beings are to maximize their capacities for improving their condition in a natural environment that is beautiful, but not entirely friendly.

This means that Weber's capitalism involves a vision of a global community, or at least of a global order in which various communities participate. To put it that way, of course, makes the whole thing sound a lot nicer than it is, or than Weber would have allowed. In his

depiction, capitalism is rapacious and exploitative and imposes an iron cage of instrumental rationality—the peculiarly this worldly form of utilitarian reasoning he described as *zweckrationalität*. Al-Qaida associates the United States with this form of social order; in a text like “In the Shadow of the Spears,” the judgment of the movement is that U.S. advocacy of democratic capitalism—another way to describe the differentiated social order—makes America a kind of missionary for idol worship. The order the United States seeks is characterized by lending at interest, of course, and this is wrong; but it is also idolatrous in that it separates religious and political institutions and wants to govern by laws that are of, by, and for the people rather than by “that which God has sent down.” As the author has it, the proper, natural condition of human beings involves submission to God, understood as conformity to God’s will in every aspect of life. A proper form of social order recognizes this. In Weber’s terms, this would be an order based on a notion of absolute ends, in which the specialists of one religion—or really, of one version of one religion—hold a monopoly on normative discourse. Osama bin Ladin and others believe that a differentiated social order is bad for human beings.

**What Do We Think?**

Toward the end of her very generous remarks, Irene Oh suggests that I am overly focused on Muslims who think that the practice of Sharia reasoning lends itself to democratic political arrangements, particularly of the type outlined in the U.S. Constitution and Bill of Rights. She notes that many working democracies have a kind of religious establishment and thus opines that there is nothing built into the legal establishment of religion itself that works against democracy.

I disagree with Oh on this point. Correlatively, I agree with one of the central points made by Bassam Tibi. On my account, the discourse of Muslim democrats is powerful, not least because it recognizes that the establishment of religion—as a goal or as a reality—is the proverbial thin edge of the wedge of religious violence. People such as Abdulaziz Sachedina, Khaled Abou El Fadl, and Abdullahi an-Na‘im (though I must note, as does Tibi, that since I wrote my book, an-Na‘im’s published work is at variance with the texts I had at hand) respond to the militant vision of an Islamic state by saying that a religious establishment actually undermines the aims for which the Islamic community came into being.

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Professor Oh says these people are not very influential, and even suspect, because they are living in the United States Professor Ilesanmi agrees. They are correct in this judgment, and I acknowledge this in *Arguing the Just War in Islam*. However, I am less sanguine than Oh with respect to the promise of “indigenous” forms of democracy, in which an Islamic religious establishment is conceived as more or less benign commitment to measure policy for its consistency with Sharia, or Sharia values, or Islamic values. I certainly will not deny that such a polity is preferable to the one advocated by militants. Nevertheless, I do think it is inadequate, for at least two reasons.

The first is theological, or at least a matter of judgment about the import of Islamic doctrine. I think the Muslim democrats are simply right when it comes to the implications of the “no compulsion in religion” theme. As an-Na'im put it back in 2006, to be a true Muslim involves a certain intentionality, that intentionality is characterized as willing or free obedience to God, and one cannot hold that obedience is free when it is imposed or even incentivized by the taxing and police powers of the state. It is of course true that no human being is an island, religiously or otherwise, and thus that one’s family, friends, and social associations will influence one with respect to the practice of faith; it is the job of the state, however, to make sure that none of those influences rises to the level of violence or to physical and other forms of abuse. I think this is a right rendering of Islamic sources, and that it is profoundly so.

The second reason I hold that even forms of “indigenous” democracy are less than adequate might be called political, or perhaps historical-contextual. Muslim democrats often take this line, when they argue that one aspect of Sharia reasoning involves the discernment of a “fit” between precedent and current circumstances. When Sachedina and others opine that the forms of Islamic polity associated with the age of empire are no longer possible or appropriate, this is what they have in mind. In a context where large numbers of people are literate, where media outlets make possible mass dissemination of information, where economies are organized in ways that emphasize interdependence, and—most importantly, for our purposes—where no religious community or group can effectively maintain a monopoly on normative discourse without resort to coercion—a political arrangement like the one envisioned by militants is simply inadequate. And again, while there are forms of religious establishment that are less objectionable than the one advocated by Osama bin Ladin and his colleagues, these less objectionable forms are similarly dysfunctional. Consider for a moment the possibility—I would say probability—that some of Britain’s
problems in those areas in the north or in the west of London, where Muslim populations predominate, are caused by the maintenance of favored status for the Church of England. This does not mean that Anglicans are actively persecuting Muslims or even practicing discrimination against them. It does mean that Muslims can only be absorbed into British political life through recognition of their religious identity. And that fact, in turn, reinforces the tendency of Muslims to think of their life in terms of enclaves designed to protect their particular religious identity and of the state as a dispenser of goods and favor to be distributed to ethnic and religious blocs. In such a situation, some groups are always going to judge themselves as less favored than others; as well, some are always going to resent the inevitable intrusions that come when the state intervenes in matters they consider ought to be governed by religion. The controversy over Rowan Williams's suggestion that Sharia might be recognized as a kind of Muslim communal law points to this. As critics put it, would this mean that Muslim women have no recourse to state law in cases of divorce? What about criminal punishment?

My point is that the logic of even relatively benign forms of religious establishment ends up reinforcing the more reactionary elements of various religious communities. While much less objectionable than the vision of the Taliban, such "loose" establishment nevertheless works against the kind of plurality made possible, and I would argue, necessary by the advance of capitalism as a global system. Religious establishment, while an aspect of historic polities, is increasingly dysfunctional. Or so I argue. And this means, as Bassam Tibi suggests, that the militant behavior with which many people are concerned is best characterized as reactionary. I confess I resisted this for a long time, in part because I wanted to avoid the notion that the militant version is not authentically religious, but is rather a manipulation of symbols by a cynical elite. I still think that is so and thus that we should understand bin Ladin and others as sincere believers. But I also think it is important to say that their vision is probably wrong and to do so on the kinds of grounds set forth by Muslim democrats; on this point, I think it is important to include Professor Tibi in this category.

**Concluding Remarks**

I have yet to respond to Scott Davis. Professor Davis correctly describes the drift of my argument regarding Muslim democrats: that I think attending to them, even incorporating their judgments and forms of reasoning in the American or Western just war debate constitutes an important value in this conflict we have
learned to call the war on terror. When we do listen—which, after all, is simply a way of recognizing that these are fellow citizens, committed to the promotion of democratic values—we learn that those who would protect and promote democratic values must do so in ways that accord with democracy.

Given what I have said about the matter of democratic practice and religion, I think all will understand when I say that this argument traced by Davis suggests one of the most important contributions the comparative study of religious ethics can make to contemporary social and political life. For such study teaches, or really embodies, practices of recognition, of listening, and of engaging in the giving and taking of reasons that are consistent with a notion of shared humanity. We no longer hold that the religious vision of Christianity or Islam or any other single community will or even should become truly universal, in the sense that the members or leaders of that community will or should hold a monopoly on normative discourse. What we do hope for is the advance of forms of social and political order that recognize and respect the fact that each and all of us are capable of experiencing pain and loss; of imagining ways to cope with a beautiful, though not entirely friendly natural environment; and of cooperating within limits, so that the good of each is connected with the good of all.