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Just War, Jihad, and the Study of Comparative Ethics

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Over the past three decades discussions of the ethics of war have been enriched by a number of historical studies. In this, the work of James Turner Johnson stands out, although books by Frederick Russell, Philip Bobbitt, and others also deserve mention. Interest in comparison, particularly of the cross-cultural type, is more recent. And for some scholars, the comparative study of the ethics of war seems to raise problems different from (and more difficult than) historical works: linguistic issues, differences in worldview, and diverse social settings somehow loom larger when one compares, say, Christian and Muslim judgments regarding the resort to and conduct of war. Are such scholars right? Does comparison need justification? Does progress in comparison require special theories or models?

In this essay, I argue that the answer to each of these questions is no. Comparative evaluation is always a part of historical study. While linguistic and other types of variation require attention, scholars engaged in historical work need no special models or justifications. This is also the case with studies involving comparison across cultures. While there are difficulties related to translation and other matters, the issues are no different than those raised by more "strictly" historical accounts. The most important questions in any comparative or historical project have to do with *purpose*: that is, scholars must be able to answer the question, why does this matter? In the case in which I am most interested—a comparison of the just war and jihad traditions—I argue that the payoff is considerable, not least with respect to understanding the encounter we have learned to call the war on terror.

The Rise of Comparative Ethics

The study of comparative ethics first emerged as a distinctive field in the 1970s. Such scholars as David Little, Sumner Twiss, and Ronald Green gave it voice, and the

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Journal of Religious Ethics provided a means of publication. They drew on earlier work, of course. Landmark studies by John Ladd and Richard Brandt brought the tools of analytic philosophy to the normative discourse of the Navajo and the Hopi. Clifford Geertz's analysis in *The Religion of Java* provided an important precedent in anthropology, as did Mary Douglas's essays in *Purity and Danger*. Mircea Eliade's fame had reached its height, influencing an entire generation of historians of religion. Above all, the work of late-nineteenth- and early-twentieth-century authors, such as Max Weber and Ernst Troeltsch, loomed large, providing Little and others with inspiration, vocabulary, and models for scholarly work.

The emergence of comparative studies of ethics as a *field* raised special questions, however. The idea of an academic field suggested academic specialization. With that notion came questions about the kind of knowledge scholarly work might produce. How would peers evaluate publications, grant proposals, and the like? What results would count? How should graduate students be trained? Where would these students, with newly minted doctorates, be employed? Would scholars of comparative ethics be historians? Philosophers? Theologians? Social scientists?

The publication of Little and Twiss's *Comparative Religious Ethics: A New Method* in 1978 provided scholars with an opportunity to discuss these and related questions. It is important to note that the authors' subsequent reflections indicate that their self-conscious purpose was simply to propose a structure for comparative study. They did not think of their work as the manifesto for a new academic field. Rather, they wanted to suggest that conversation might be easier if the variety of scholars interested in comparative studies of ethics—that is, in descriptions of human beings engaged in the normative assessment of behavior—could reach a consensus on the use of such key terms as "religion," "morality," and "law," to name a few.

Nevertheless, the publication of *Comparative Religious Ethics* sparked a more far-reaching debate, which addressed not only questions about the best way to "do" comparative study but whether such inquiry was possible in the first place. One of the standard formulations of this point laid stress on the uniqueness of various vocabularies or moral systems. How could a scholar, bearing the particular set of conceptions built into his or her vocabulary, hope to describe the normative reasoning of others? Would not the use of terms familiar to students of European and North American ethics produce "biased" or distorted accounts of groups far removed from debates between deontologists and utilitarians, or between advocates of natural law and divine command theories of ethics?

The focus on the unique or particular quality of normative vocabularies came from a number of quarters. It would not be out of place to tie the issue to historical studies, or to what Troeltsch called "the historical consciousness."[1] As Troeltsch explained, this mind-set is the characteristic mode of modern thought. It requires that one view events "in their uniqueness," as the product of very specific instances of cause and effect. Taken far enough, the notion of all events as unique suggests the impossibility of telling any sort of coherent story about long-term trends. Thus, events in Philadelphia on July 4, 1776, might be usefully described in terms of relations between the English crown and particular sets of people living in the North American colonies. How far back the story might go—to the French and Indian war? to the settlements in Jamestown and Massachussetts Bay?—would be an important question. But one would be wary of accounts relating the "story of liberty and its progress," by which (for example) the Declaration of Independence might be tied to the Magna Carta. And one would certainly need to be circumspect about the ways in which the events of July 4, 1776, relate to later events—say, the Emancipation Proclamation.

Given these sorts of strictures, how could one possibly think about a study of Chinese and American conceptions of liberty or, more to our point, of Muslim and Euro-American notions of the resort to and conduct of war? The very idea is unsettling, a matter of comparing apples and oranges.

In responding to criticisms of this sort, David Little observed that, in practice, human beings do compare apples and oranges—every time they sit down at a table and decide which piece of fruit they want to take from a bowl.[2] Do I take the crisp, tart taste of the one, or the sweeter and juicier texture of the other? With due respect to the sensibilities of advocates of uniqueness, the fact is that even historical studies require considerable leaps of imagination. If a twenty-first-century scholar is able to describe the events of July 4, 1776 in their uniqueness, he or she is able to do so by labor that overcomes the differences between the vocabulary of the present and of the past. Or to take another case, in which differences of vocabulary are more obvious, if a contemporary historian is able to describe the interests of participants in the Peace of God movement, he or she has worked hard to translate medieval vocabularies, political arrangements, and technological abilities into a mode that lends itself to appreciation by his or her peers. Or again, a historian's account of the early Muslim expansion suggests a way of bringing the motives that impelled the disparate tribes living in the Arabian Peninsula during the seventh century into creative relation with contemporary thought. As Jonathan Z. Smith

once said regarding the study of religions, it is best not to assume that the behavior of human groups removed from our own in space and time is exotic.[3] Rather, one should proceed on the assumption that "their" behavior is "ordinary," familiar enough for us to appreciate. Comparison, as Little has noted, is something we do every day. In a more philosophical mode, Donald Davidson suggests that we have no reason to believe that the vocabulary of people removed from us by space and/or time is untranslatable.[4] While we ought not to assume that any description of human behavior we produce is final, complete, or infallible, we also ought not to suppose that such descriptions are impossible or foolhardy.

The real question is not whether comparison is possible, but what purposes it serves. In this, comparative studies of ethics, and in particular of notions of justice as related to war, may be judged regarding how well they illumine questions in which we are interested. Let us think for a moment about the kinds of things we want to know, and of how comparative study might speak to these.

Comparison and the Identification of Difference

In general, historical studies attempt to tell a story of development. For example, James Turner Johnson's *Ideology, Reason, and the Limitation of War* provides an account of the interactions among military, religious, legal, and political interests in the formation of the norms we associate with *jus ad bellum* and *jus in bello*. While one may usefully focus on any of the historical periods delineated in Johnson's story, the overarching point has to do with the question of how modern Europeans and North Americans have come to the point where criteria of right authority and the like are brought to bear on issues connected with the cold war. In the end, Johnson has constructive as well as descriptive interests. In the manner suggested by his essay "Keeping Faith: The Uses of History in Religious Ethics," proposals are made concerning the relevance of particular parts of the just war story to the contemporary context. And this approach comes to be characteristic of much of Johnson's work. Through a method of comparison and contrast, he shows us that some parts of the just war tradition help in thinking through the options before us, and in evaluating alternative courses of action. Perhaps the most characteristic rhetorical stance adopted by Johnson involves an account of the ways current discourse elides or obfuscates options developed by our forebears. Thus, in "The Broken Tradition" the point is that modern versions of just war tradition differ from older accounts, the former laying stress on a

"presumption against war," while the latter focused on a "presumption against injustice." Again, in "Aquinas and Luther on War and Peace," the argument is that the contemporary stress on just cause differs from the premodern insistence that right authority is *primus inter pares* among just war criteria. In "The Idea of Defense in Historical and Contemporary Thinking about Just War," Johnson's point is that the contemporary notion of defense as the *only* just cause of war departs from the medieval practice by which the right of defense was considered so obvious as to need no justification. Just cause was reserved for cases involving the recovery of things wrongly taken, punishment of wrongdoing, and the like.[5]

In every case, Johnson's arguments suggest an approach whereby historical study shows us a way of thinking that is different from our own. The idea is similar to one advanced by C. S. Lewis in "Learning in War-Time." Good scholarship, Lewis argued, is always important, but:

> Most of all, perhaps, we need intimate knowledge of the past. Not that the past has any magic about it, but because we cannot study the future, and yet need something to set against the present, to remind us that the basic assumptions have been quite different in different periods and that much which seems certain to the uneducated is merely temporary fashion. A man who has lived in many places is not likely to be deceived by the errors of his native village: the scholar has lived in many times and is therefore in some degree immune from the great cataract of nonsense that pours from the press and the microphone of his own age.[6]

Personally, I think Lewis overestimates the wisdom of scholars. Nevertheless, he provides a nice example of one understanding of the purpose of the study of other times and places. The goal is to illustrate difference; to remind us that no matter how settled the patterns of contemporary practice are, things have not always conformed to this pattern; and to display alternatives. Even so, Johnson's historical studies provide material for diverse ways of thinking about the issues before us.

If this is so for historical studies, it may also hold for studies across cultures. Indeed, much of what we learn from the study of Islam reinforces points made by Johnson about the evolution of the Western just war tradition. Consider, for example, the argument of his "On Keeping Faith"—a study of Muslim thinking about war provides a strong and consistent example of the way practical judgment proceeds by way of establishing analogies between historical precedents and current circumstance. Or, again, the point about right authority as a kind of first among equals with respect to standard lists of just war criteria resonates with the vast

majority of Muslim authors, as does the judgment that defense barely rises to the level at which notions of just cause may be debated. To take the last point a bit further, one can argue that the modern attempt to restrict just wars to defense ultimately results in an expansion of that category. This holds true for Muslim writing as well. When mid-twentieth-century apologists, such as Mahmud Shaltut, argued that the early Muslim expansion was defensive in nature, they opened a door through which at least two generations of militant authors have walked. From the standpoint of such texts as *The Neglected Duty: The Creed of Sadat's Assassins and Islamic Resurgence in the Middle East* or the 1998 World Islamic Front's *Declaration Concerning Armed Struggle Against Jews and Crusaders*, the category of defense covers any and all instances of Muslim resistance, from the assassination of Anwar Sadat to the bombings of U.S. embassies in Kenya and Tanzania to the attacks of 9/11.[7]

To these points we must add, though, that the illustration of difference between historic and modern aspects of just war and jihad traditions does not always serve to highlight alternatives that are possible or desirable. Thus, the study of premodern Muslim judgments pertaining to armed struggle involves analysis of scholarly responses to questions regarding the distribution of booty and of the impact of location on the status of captives (that is, when can they be classified as slaves?). In general, premodern Muslim discourse about war reflects the establishment of a political order quite different from that of any existing regime, whether in areas where Muslims are the majority or not. Similarly, I doubt that many interpreters of just war tradition really think that a return to the political arrangements characteristic of medieval or early modern Europe would be desirable. The point here is that difference comes in more than one form. In some cases, the idea is to call attention to alternatives that might help us. In others, the purpose must be to show us the kinds of things we have learned to avoid.

Comparison and the Identification of Shared Concerns

The illustration of difference is not the only purpose of comparative study, of course. In particular circumstances the purpose may be to identify points of agreement and shared concern. In my view, the war on terror is an apt case for this approach, which I shall illustrate with reference to my own work in *Arguing the Just War in Islam*.[8] In that book I describe contemporary Muslim argument as it is occasioned by the claims of al-Qaeda and analogous groups,

which may be summarized as: (1) Muslims have a duty to establish a particular kind of government—namely, government by divine law; (2) encroachments on historically Muslim lands by the United States and its allies constitute a failure on the part of Muslims to fulfill this duty, as well as an obstacle to Muslim performance; (3) armed force is necessary to rectify the situation; (4) resort to armed force is the right and duty of any and all Muslims, wherever they are situated; and (5) such force may be directed at any and all targets, including those ordinarily considered "civilian." These claims are stated in the *Declaration on Armed Struggle Against Jews and Crusaders*, signed by the leaders of al-Qaeda (Osama bin Laden and Ayman al-Zawahiri) and of other militant organizations. Bin Laden, al-Zawahiri, and others have enlarged on and defended the *Declaration* in a variety of statements, and today anyone can find it rehearsed on websites and Internet chat rooms around the globe.

In my book, I describe two arguments by which Muslims challenge this position. The first stays largely at the level of tactics—what one might call a "conduct of war" argument. Here, the focus is on the saying of the Prophet: "When you fight, make a just war. Do not cheat or commit treachery. . . . Do not kill children." In other reports, we are given to understand that the exemplary practice of the Prophet involves an attempt to distinguish between combatants and noncombatants, and that the latter category typically includes women, children, the old, the lame, religious specialists, and others. In historic *fatawa* or responses of jurists to questions about the conduct of fighting, we understand that obedience to the Prophet requires a good faith effort in this regard. Muslim scholars admit that there are situations in which an otherwise legitimate attack will bring about harm to noncombatants. In some cases, such harm may be excused. In other cases, the harm may be so extensive as to be disproportionate; in those cases, the jurist al-Mawardi, from the eleventh century C.E. (fifth century A.H.) says that the Muslim fighters should withdraw and wait to fight another day. Others have a higher threshold in this regard. The point, however, is that no one writing in the jihad tradition thinks that indiscriminate or total war can be justified. Thus the argument that, insofar as militant pronouncements advocate a practice of indiscriminate targeting, they are wrong on Islamic grounds.

This issue—that is, regarding the dissonance between the tactics favored by militants and the historic judgment that jihad requires discrimination between civilian and military targets—is the most prominent line in the "conduct of war" criticism of militant claims. I think the reason for this is obvious: the requirement

that Muslim fighters distinguish between combatants and noncombatants is one of the most well-established precedents in the juridical discussion of the judgments pertaining to armed struggle. Other criticisms relate to the militant stipulation that the entire world is a battlefield, or that the right and duty to use lethal force belongs to any Muslim, anywhere. The Egyptian scholar Yusuf al-Qaradawi, for example, thinks that fighting is justified in cases of occupation, as in Israel or Iraq, but he is on record as denouncing the 1998 bombings of U.S. embassies in Kenya and Tanzania, as well as the 9/11 attacks in New York and Washington and subsequent attacks in Madrid and London. The Saudi dissident Muhsin al-Awaji presents a similarly interesting critique of militant tactics when he says that the notion of fighting as an individual duty means that an established government should recruit and send fighters to areas where Muslims are in danger. It does not mean, in other words, that anybody anywhere may pick up arms whenever it suits him or her.

It must be said, however, that these criticisms of war conduct take place within a larger context of agreement about political goals. Al-Awaji, al-Qaradawi, and others agree with militant judgments on an overarching point, which is that Muslims have a duty to strive for the establishment of governance by divine laws. To get a more thoroughgoing criticism of militants, we must go to another set of interlocutors, whom I describe as Muslim democrats. These are people who argue that a proper reading of the Qur'an, the sunna, and other approved sources lends itself to the judgment that Muslims should work for the establishment of constitutional democracies, in which the rule of law establishes protections along the lines of international human rights standards. For these interpreters, the tactics advocated by militants are symptomatic of a larger difficulty, which emerges whenever the phrase "Islamic State" is identified with "a state in which Islam is the established religion." For Abdulaziz Sachedina, Khaled Abou El Fadl, and others, the Qur'anic dictum that "there is no compulsion in religion" means precisely that Muslims, as others, should distinguish between the task of calling people to faith and the task of political governance. The idea that the state should protect an Islamic establishment, so that war making, policing, and taxing powers are guided by religious interests, actually creates a context in which religious violence makes sense. For Muslim democrats (like the Protestant sectarians of old), the notion of promoting religion by means of the power of the state is a contradiction in terms. They would criticize militancy in terms of its basic presuppositions, and they do so on Islamic grounds.

We can ask a variety of questions about the argument outlined here. One question is, who has the better of the argument? Anyone familiar with Islamic tradition will quickly perceive that Muslim democrats are pushing the envelope. Most historic Muslim writing envisions an Islamic state as one in which the Shari'a is established as the law of the land and enforced by a consultation between religious and political leaders, with Muslims as citizens of the first rank and non-Muslims living under Muslim protection. This suggests that the case for governance by divine law is quite strong.

Nevertheless, familiarity with Islamic tradition will also suggest that making judgments about the Shari'a is an art, in which one must establish a fit between established precedents and current circumstances. In that sense, imagination and creativity are important to Muslim practice. One line of democratic argument involves a contextual account of traditional views about religious establishment, the point being that what fits with one set of circumstances may not fit with others. For my part, I think Muslim democrats give a pretty good account. I do not suppose we should declare them winners in the contemporary debate, but they make a number of good points.

We can also ask which of the interlocutors has momentum, in the sense of capturing a Muslim audience. Here, I think we have to say that Muslim democrats are marginal. This means that, for practical purposes, the most important aspect of contemporary Muslim argument regarding just war is among various advocates of Islamic governance, and the dispute is thus about tactics: When is fighting justified? In what circumstances? Who can authorize fighting? What targets are legitimate? And so on. Most Muslim interlocutors criticize al-Qaeda with respect to one or more of these questions, declaring that militancy does more harm than good, or that militant behavior ends up looking every bit as unjust as the policies militants say they oppose.

I think the resonance between this intra-Muslim debate and the just war tradition is obvious and important. It is obvious because the just war tradition's characteristic discussion of *in bello* norms expresses concerns shared by Muslim tradition. We know, of course, that the precise definition of the category "noncombatant" can be contentious. In Muslim discourse we have the kind of issue raised by Yusuf al-Qaradawi: Islam does not authorize the direct and intentional killing of noncombatants, he says. However, we do have to talk about who the noncombatants are—for example, in the case of fighting in Iraq. Here, al-Qaradawi is interested in the status of U.S. and allied civilians who are on the ground,

providing various services aimed at building up the government in Baghdad. He wants a debate about the status of people overseeing construction projects, for example. In just war terms, al-Qaradawi's observations imply an overly narrow conception of noncombatancy, and this is true for many Muslims as well. Which is precisely the point: Muslim criticism of the war-fighting strategy adopted by al-Qaeda and other militant groups presents an opening for discussion across the lines of religio-cultural traditions.

In this sense, the resonance identified through comparative study is obvious. It is also important, because it reinforces the notion that one of the principal measures by which the war on terror will be judged has to do with *in bello* criteria. I do not propose to go into the details of U.S. and allied policy here. I do think it important, though, that General McChrystal's 2009 memorandum on strategy in Afghanistan suggests an analysis that recognizes the importance of war conduct in this conflict. To argue as McChrystal does that security of the general population should be the linchpin of allied strategy, and that an overreliance on aerial bombardment (with resulting collateral damage to noncombatants) "contains the seeds of [allied] defeat" is to move in a direction suggested by comparative study of Muslim and just war traditions.[9]

Persistent Differences and Common Stories

Having spoken about the identification of concerns shared by Muslim and just war traditions, it is important to acknowledge that the foregoing analysis of intra-Muslim debate also points to some more or less intractable differences. At least as presently constituted, Muslim criticism of the war-fighting doctrine of militant groups takes place within a broad agreement regarding the desirability of government by divine law. Not that everyone agrees on the design of such government—a close examination of the discussion in Iraq following the demise of Saddam Hussein's regime will show that there are more and less strict understandings of the role of precedent, the participation of women, and the place of non-Muslims among advocates of an Islamic state. But none of the parties is talking about the "regime of ordered liberty" familiar to American discourse. Nor is there a full commitment to the standards of international human rights of the type envisioned by Muslim advocates of democracy.

This suggests that issues pertaining to right authority are at the forefront of Muslim discussions of justice and war and, further, that certain substantive

differences between the consensual position of Muslims and that of Europeans or North Americans will endure for the foreseeable future. Agreement on the judgment that "total war is wrong" is important, but it hardly resolves all problems.

The persistence of difference with respect to right authority raises important questions for policymakers. What does it say about the role of comparison in historical studies of just war? Does it suggest, for example, that between the two purposes of comparison outlined in this paper—to identify differences and shared concerns—the identification of difference takes priority?

I think the answer is no, because the identification of differences and of shared concern are more or less "twins" with respect to comparative study. It is a simple point, but nevertheless important to state: one can only identify difference against a background of shared concern. To put it another way, we must assume a degree of familiarity in the conduct of either historical or comparative inquiry. Neither events nor cultures can be *entirely* unique. As Troeltsch observed, there is a point at which the insistence of the historical consciousness on the particular quality of events actually undermines historical study.[10] In comparative studies of war and other aspects of human behavior, we do well to remember Francis Hutcheson's comment about the virtues of emphasizing "common stories" rather than those things "exciting horror and making [readers] stare":

> The late ingenious author [Lord Shaftesbury] has justly observed the absurdity of the monstrous taste which has possessed both the readers and writers of travels. They are sparing enough in account of the natural affections, the families, associations and friendships of the [American] Indians . . . indeed, of all their normal pursuits. They say, "These are but common stories. No need to travel to the Indies for what we see in Europe every day." The entertainment, therefore, in these ingenious studies consists chiefly in exciting horror and making men stare. The ordinary employment of the bulk of the Indians . . . has nothing of the prodigious, but a human sacrifice, a feast upon enemies' carcasses can raise a horror and admiration of the wondrous barbarity of the Indians.[11]

To which we should add, perhaps, that an emphasis on horror also sells books, though at the cost of providing the kinds of analysis that help us in the difficult world of political and military affairs.

NOTES

[1] For example, see Ernst Troeltsch, *The Absoluteness of Christianity and the History of Religions*, introduction by James Luther Adams, trans. David Reid (Richmond, Va.: John Knox Press, 1971).

[2] See David Little, "The Present State of the Comparative Study of Religious Ethics," *Journal of Religious Ethics* 9, no. 1 (Spring, 1981), pp. 210–27.

[3] See Jonathan Z. Smith, *Imagining Religion: From Babylon to Jonestown* (Chicago: University of Chicago Press, 1982).

[4] I have in mind the argument of "On the Very Idea of a Conceptual Scheme," in Donald Davidson, *Inquiries into Truth and Interpretation* (Oxford: Clarendon Press, 1984), pp. 183–98.

[5] James Turner Johnson, *Ideology, Reason, and the Limitation of War* (Princeton, N.J.: Princeton University Press, 1975); "The Broken Tradition," *National Interest* (Fall 1996), pp. 27–30; "On Keeping Faith," *Journal of Religious Ethics* 6, no. 2 (Fall 1978), pp. 98–116; "Aquinas and Luther," *Journal of Religious Ethics* 31, no. 1 (March 2003), pp. 3–20; and "The Idea of Defense," *Journal of Religious Ethics* 36, no. 4 (December 2008), pp. 543–56.

[6] "Learning in War-Time" was a sermon preached in Oxford in autumn 1939. It is printed in C. S. Lewis, *The Weight of Glory and Other Addresses* (New York: Macmillan, 1949), pp. 43–54; the quote is from pp. 50–51.

[7] On these points, see John Kelsay, *Arguing the Just War in Islam* (Cambridge, Mass.: Harvard University Press, 2007). The first text referred to is commonly known as the *Creed of Sadat's Assassins*. The author was Muhammad al-Faraj, and the original title *al-Farida al-Ghaibah*. It was translated by Johannes J. G. Jansen as *The Neglected Duty* (New York: Macmillan, 1986). The *Declaration* originally appeared February 23, 1998, in the London-based Arabic newspaper *Al-Quds al-Arabi*. Translations abound; the one at ftp.fas.org/irp/world/para/docs/980223-fatwa.htm is generally sound.

[8] John Kelsay, *Arguing the Just War in Islam.* In what follows, I also draw on a more recent and as yet unpublished paper of mine entitled "Arguing the Just War in Islam: Who's Up? Who's Down?"

[9] Here I refer primarily to "COMISAF's Initial Assessment," also known as "the McChrystal Report," dated June 26, 2009. This sixty-six-page report, ostensibly confidential to the secretary of defense, was published in the *Washington Post* on September 20, 2009.

[10] Troeltsch, *The Absoluteness of Christianity*.

[11] I owe this reference to Jonathan Z. Smith, and the editorial insertions are his. See his *Imagining Religion: From Babylon to Jonestown*, p. xii.