REVIEW ESSAY

CONSTRUCTING CONFLICT: A REVIEW ESSAY

CRESCENT AND DOVE: PEACE AND CONFLICT RESOLUTION IN ISLAM. Edited by Qamar-Ul Huda. United States Institute of Peace Press 2010. Pp. 336. $24.05. ISBN: 1-601-27060-7;

JUST WAR ON TERROR? A CHRISTIAN AND MUSLIM RESPONSE. Edited by David Fisher and Brian Wicker. Ashgate 2010. Pp. 240. $29.95. ISBN: 1-409-40808-6;

ISLAMIC LAW AND THE LAW OF ARMED CONFLICT: THE ARMED CONFLICT IN PAKISTAN. By Niaz Shah. Routledge 2011. Pp. 176. $110.56. ISBN: 0-415-56396-8.

Reviewed by Kevin Carnahan[*]

Wars are not confined to the battle field, they extend into our minds. Human conflict shapes and is shaped by the ways in which we conceive the world. Our work in constructing reality is rarely so visible as when we work to make sense of social groupings and institutions involved in conflict, and attempt to name the conflict itself. Here, it is especially transparent how our hopes, allegiances, and fears shape our perspective on reality.

This article explores the ways post-9/11 reality is constructed in three recently published books. Each book envisions religion (Islam and, in some cases, Christianity) as playing a significant role in regulating contemporary international conflicts, and each constructs religious traditions and international conflicts in ways that suit the authors' accounts of the role that these traditions ought to play. Instead of treating each book separately, in the sections below, I will put them in dialogue with one another as I critically present how various authors construct Islam, terrorism, and the war on terror.

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ISLAM: LAW OR SOMETHING MORE?

It is typical for contemporary treatments of Islam to focus on *shari'a* law. This is certainly the case in Niaz Shah's treatment of Islam, which not only focuses upon *shari'a* law, but also makes extensive claims about the way *shari'a* law unites the Muslim community. Shah's central claim is that Islamic laws of *qital* (armed conflict) ought at some points to be deployed in the place of international law where conflicts involve Muslim parties. To support this position, he argues that (1) the two systems of law are compatible in structure and content (more on the latter claim below), and (2) deploying *shari'a* law would bring about "enhanced compliance" with the law inasmuch as Islamic law is already viewed as legitimate by the parties involved. (11)

So, how does Shah construct the structure of *shari'a* law? Shah's treatment assumes that the content of *shari'a* law is established by highly trained and vetted members of the *ulama* and especially today by panels of *ulama* created by national governments in the Middle East. (13-14) Shah treats both international law and *shari'a* law as transnational codes of law. These bodies of law can trump national laws. They can also be flouted by particular transnational and national actors.

What shall we make of such a construction of the structure of *shari'a law*? When offered as an account of "mainline" Islam, it seems viable. But Shah is attempting to do something more here. He is suggesting that *shari'a* law, understood in this way, will be viewed as legitimate by contemporary participants in Muslim conflict zones. Given this, I find Shah's construction dubious. Take, for instance, his assumption that official panels of *ulama* are authoritative bodies for establishing *shari'a* judgments. Surely this is a contentious claim, which would not be accepted by many of the parties to whom Shah wishes to apply this law.

For much of Islamic history the *ulama* (scholars of *shari'a* law) have been treated as uniquely authoritative judges and educators in Sunni Islam. Becoming a qualified member of the *ulama* required years of study, mastery of a number of skills, and knowledge of and respect for longstanding *shari'a* traditions. Even within this classical model there is a high level of anarchism. As Shah notes, there is no one highest authority amongst the *ulama*, and Muslims are allowed to seek out second opinions if they don't find the *fatwa* (judgment) of a particular *mufti* (judge) to their liking.

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Modernity has seen the enlargement of this anarchism with a series of challenges to the authority of the *ulama* itself. Unfortunately, Shah does not treat the rise of *salafism*, which originated as an attempt to claim the ability to reform Islam from outside the tradition of the *ulama*. Osama Bin Laden was no member of the *ulama*, but this did not prevent him from issuing a *fatwa* calling for the killing of American civilians. For Bin Laden, the *ulama*, along with the governments of the Middle East are irrelevant. Nor does Shah take note of the tensions between many representatives of the *ulama* and the national governments that establish *shari'a* courts. Many *ulama*, like Yusuf al-Qaradhawi and Muhammad Tantawy, have suggested by their silence that they agree with Osama Bin Laden on the insufficiently Muslim character of contemporary Middle Eastern states. All of this indicates that *shari'a* is more anarchic than Shah presents it. As such, it undercuts the claim that deployment of *shari'a* law would serve to rein in contemporary inter-Muslim conflict.

Many of the authors of essays in *Crescent and Dove* may wish to go farther in departing from Shah. The essays in this collection repetitively critique those who focus too narrowly upon *shari'a* when presenting Islam. (xiv, 5, 111, 131) Ibrahim Kalin (3-37), for instance, suggests that the emphasis upon peace in Islam is obscured by those who do not meditate on the nature of God as *al-salaam* (peace) and who do not think about what it means to live in a world that is controlled by God and not themselves. Kalin's version of Islam entails engagement with *kalam* (philosophy) and Sufi spirituality. Locating secular and religious fundamentalism as a product of the modern segmentation of our lives and communities, Waleed El-Ansary (107-25) argues for a recovery of a holistic Islamic sense of purposeful labor (what many Christians know as "vocation") in order to shortcut a clash of civilizations. Invocations of *shari'a* reasoning amongst these authors often come with a dose of classical *salafist* methodology; reaching back to the early *salaf* in order to challenge later established interpretations.

Such attempts to construct Islam face significant challenges. As students of Islamic history know, some of these intellectual battles have been fought before. The effort to ban *kalam* in medieval Islam was so successful that for many "Islamic philosophy" appears oxymoronic. Further, there is always the danger that in attempting to reform a tradition, one steps outside the tradition. Explicitly drawing upon sources from outside the tradition can be useful, but it can also come at the cost of effectiveness in convincing those who hold a more limited view of what is authoritative. Still, I take it that the proposals here are

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put forth not primarily as descriptive accounts of Islam, but rather as creative suggestions as to what Islam might be. As such, they reflect the dynamic nature of contemporary Islamic culture which is still searching for its future identity. Islamic history is rife with possible futures, and the ones proposed here are quite promising.

ISLAM: A RELIGION OF PEACE?

Beyond the diversity of their sources and their generally holistic approach to Islam, the authors of essays in *Crescent and Dove* do have a common purpose: to show that Islam promotes peace. Some go about this in very practical ways. Asna Husin (151-77) tells the story of a peace education program in Aceh, Indonesia. Ayse Kadayifci-Orellana and Meena Sharify-Funk (179-203) provide accounts of several female Muslim peacemakers. Zeki Saritoprak (95-105) offers a short review of the life of Said Nursi, who is presented as a nonviolent, Islamic leader. Most of the essays, however, include substantial treatments of the sources for peace activism in Islam. As noted above, these include *kalam* arguments, the nature of God as peace, and Sufi spirituality. They also, according to the authors, include many other traditional Islamic principles, such as the need to act for *adl* (justice), the tradition of respect for the *dhimmi* (religious minorities), the imperative to do *ihsan* (good) to one's neighbors, the emphasis upon forgiveness (divine and human), the responsibility of humans as "vice-regents" of God in the world, a deep sense of human dignity and equality, and a respect for the sacredness of human life.

There can be no doubt that Islam contains sources and mechanisms for promoting peace. No civilization can exist without such sources and mechanisms, and Islam has been a great center for human civilization. This said, I am skeptical of the extent to which some of the authors in this collection present Islam as "a religion of peace." Saritoprak's treatment of Said Nursi, for instance, begins with comparisons to Mohandas Gandhi and Martin Luther King Jr. Such suggestions have the unfortunate effect of eliciting skepticism in the reader as she or he reads of Nursi's participation in World War I and his tradition of wearing a pistol and a dagger during the British occupation of Istanbul. I do not doubt Nursi's commitment to peace. His belief that the present is a time for conquest by means of "inner jihad" clearly distinguishes him from militant Islamists, but comparison to Gandhi overreaches unnecessarily and has the rhetorical effect of undercutting the primary point.

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The authors would also do well to acknowledge more explicitly the extent to which many of the principles on which they draw are ambiguous in relation to preserving peace. Justice is central to Islamic life, but a commitment to bringing about just order can be in tension with a commitment to peace. When arguing for the principle of equality as a ground for peaceableness, Mohammed Abu-Nimer quotes Ibn Taymiya's denouncement of human hierarchy. (80) Sayyid Qutb argues the same point in his manifesto *Milestones*, but Qutb concludes that this is why Muslims are now called to overthrow all human governments by means of military *jihad*. It is not that Abu-Nimer is wrong to cite equality (or justice) as important to peace. Enduring peace requires some measure of justice. But it is also important, especially within Islam, where the emphasis on justice is so strong, to acknowledge that there is also a tension between these concepts.

It is due to this tension that some scholars would rather reject the claim that Islam ought to be a religion of peace. Tim Winter (Fisher & Wicker 9-24), in his essay in *Just War on Terror?*, defends Islam against the charge of "evangelical comparativists" who would contrast violent Islam with peaceful Christianity. From an Islamic perspective, he reminds us, the prophets (including Jesus) have all been primarily in favor of establishing justice.

This brings Winter to treat the doctrine of *jihad*. According to Winter, the doctrine of *jihad* allowed for offensive wars in medieval Sunni law but, under the pressure of European expansion and rising state sovereignty, the doctrine has been reduced to legitimate only wars of defense. Winter suggests that the Israeli/Palestinian conflict is now the primary locus for a new argument about the limits of *jihad*. This conflict, he notes, may spur a reversal of the moderation that has marked modern treatments of *jihad* by Islamic scholars.

Winter's treatment of *jihad* is usefully contrasted with those provided by Niaz Shah and Asma Afsaruddin. (Huda, 39-62) In her article, Afsaruddin argues for the recovery of a concept of *jihad* that transcends *qital* (armed conflict). In the Quran and early Muslim community, *jihad* could connote patient endurance and nonviolent (although not inactive) resistance to wrongdoing. While the Medinan "sword verses" allowed for military actions, these actions were, on Afsaruddin's account, quite limited. Agreement on the meaning of *jihad* as military action, and upon the legitimacy of offensive *jihad* only coalesced in the early Abbasid period. However, even here, Afsaruddin finds a genre of literature called *"fada'il al-sabr*, or the excellences or

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virtues of patience," that continued to compete with literature extolling the virtues of armed combat. Today, Afsaruddin argues, advocates of the piety of *sabir* (patience) would do well to reclaim the language of *jihad* from those who have reduced it to *qital*.

Niaz Shah is certainly in agreement with Afsaruddin in advocating for this rhetorical shift. Indeed, Shah claims that to treat *jihad* as referring exclusively to armed conflict is a clear error. As he explains, "Verses of the Koran which allow the use of force in self-defense are the Islamic *jus ad bellum*. Once *jihad* as self-defense begins, it becomes *qital*. Islamic law provides rules about how to conduct *qital*. The rules governing the conduct of *qital* are the Islamic *jus in bello*." (24)

It will come as no surprise to scholars of Islam that *jihad* is an essentially contested term. Still, not all constructions of *jihad* are created equal. Shah's deployment of the term is problematic, given the bar he has set for himself in claiming that he is putting forward a law that would be acceptable to parties on all sides of Muslim conflict. No conception of *jihad* or *qital* has such standing. And while Shah is right in concluding that most contemporary *ulama* find *qital* to be justified only in self-defense, this is not a consensus that extends across Islamic history. Winter may be right to be concerned about "comparativists" who attempt to denigrate Islam by impeaching its credentials as a religion of peace. Islam is a religion of justice, and Muslims need feel no obligation on the basis of foreign reasons to withdraw from that ground in order to meet some external measure. At the same time, Afsaruddin has made a strong case that Islamic history proves much more pluralistic in its treatment of piety concerning conflict than many contemporary pundits would assume.

ISLAM AND INTERNATIONAL SOCIETY

Reza Eslami-Somea (Huda, 127-49) presents the story of Islam struggling to find its footing in relation to modernity. Modernists, he says attempted to reconstruct Islam in order to meet the challenges of modernity. But they were quashed by recalcitrant *ulama* and conservative autocrats who ruled the emerging nation-states in the Middle-East. The result has been the continuation of a version of *shari'a* that is in tension with international standards of human rights, especially on issues like freedom of religion, women's rights, and the code of *hudud* punishments.

Eslami-Somea is in favor of a new, more thorough reconstruction effort. Drawing upon the work of Dr. Abdolkarim Soroush, Eslami-

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Somea distinguishes Islam, which is unchanging, from knowledge of Islam, which is contingent, and always culturally contextual. He further finds that the most promising Muslim proposal for interpreting Islam in the present is offered by Abdullahi An-Na'im. Ultimately, however, Eslami-Somea is doubtful that Islam has the resources to come into compliance with international law without external help. He hopes that pressures from non-Muslim regimes might be combined with a more culturally independent grounding for human rights to produce a palatable and effective change in the Muslim world.

I am skeptical of Eslami-Somea's proposal, mostly because I am doubtful that there exists a culturally independent grounding for human rights. "Reason, human dignity, and natural law" (to borrow Eslami-Somea's list) are something like Islam in Soroush's construction. They may be unchanging realities, but they are only expressed via culturally contingent media. Further, I would emphasize the price of Islamic reformers drawing upon sources from "outside Islam." So long as international statements about human rights appear to be a product of non-Muslim, western culture, it is doubtful that they will be an effective mechanism for reforming views of personhood within Islam. No doubt, such sources can be used to deploy pressure upon the tradition, but when one goes beyond the tradition to critique it in the name of the outside source, one also loses a great deal of leverage in the argument for reform. There are costs to crossing some dialogical boundaries.

In contrast to Eslami-Somea, Niaz Shah is confidently optimistic about finding overlap between *shari'a* standards and international law. What, especially given the contrast with Eslami-Somea, shall we make of Shah's claims to compatibility? On the majority of cases, Shah's conclusions are sound. The majority of *in bello sharia* requirements do overlap significantly with international standards. Count one in the favor of a *jus gentium*. There are a few points, however where Shah should have granted that there exists greater ambiguity within *shari'a* law than he indicates. I have already noted problems in his claims about when *qital* is justified. He also assumes too quickly that the governments of contemporary nation states fill the place of the caliph in *shari'a*.

Several *in bello* standards also deserve further treatment. Take, for instance, the treatment of female captives in war. Despite one acknowledged incident in which the Prophet apparently allowed sex with captive females, Shah cites several Quranic passages emphasizing that none of them directly endorse having sex with captive females. Several specifically allow sex with slaves. Some allow the successful

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warrior to transfer the status of captive women to that of slaves. Some permit the marrying of slaves who are Muslims. One prohibits sex outside of marriage. (47) Presumably, Shah means to suggest that this last passage provides guidance for interpreting the rest. Unfortunately, Shah never explores how these passages have been read in the *shari'a* tradition, nor does he say exactly how one ought to synthesize or order the several different passages. Further, there is no exploration of the problem of "consent" when marrying a slave, nor of the viability of the captive/slave distinction on which Shah's analysis must rest. When Shah returns to the question in his comparison with international law, Shah too quickly proclaims this compatible with international law by noting that Islamic law does not allow sexual intercourse outside of marriage. (79) At the very least, more work needs to be done to explore the claim of compatibility here.

Shah is on the strongest ground in claiming that there is an overlap between the Islamic law of *qital* and international law on the question of non-combatant immunity. The greatest chink in the armor of Al-Qaeda's claims to Islamic legitimacy lies here. However, even here, it should be noted that *shari'a* is not always interpreted consistently. Some members of the *ulama* have made special exceptions for the targeting of Israeli citizens. This is not to say that they present good *shari'a* arguments for their conclusions. It is to say that *shari'a* is, again, a more anarchic system than Shah presents it to be.

TERRORISM

Long before the first plane crashed into the World Trade Center, Osama Bin Laden had considered himself a member of the *mujahideen*—literally, participants in *jihad*. Within days after the attacks in New York and Washington D.C., the term *jihadi* had entered the lexicon of common Americans. Over a decade later, scholars continue to argue about how actors like Bin Laden ought to be categorized within Islam.

By 2007 Douglas Streusand was convincingly arguing that the American use of the term *jihadi* in describing Bin Laden and others was a rhetorical error. (see Huda, 69 n3) Whatever the debates about the meaning of *jihad*, there was no doubt that *jihad* carried a positive connotation in Islam. To call Bin Laden a *jihadi* was to agree that he was struggling in the pathway of God and his enemies were against God.

Following Streusand's lead, Tim Winter explores two alternative categories for naming contemporary terrorist organizations: *baghy* and

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hiraba. (Fisher & Wicker, 9-24) *Baghy*, Winter explains, is a form of unauthorized religious rebellion. This certainly fits with some terrorist groups, but Winter is not convinced that this term adequately captures the viciousness of terrorism. *Hiraba*, in contrast, suggests "brigandage, rape, the wanton destruction of property, and the murder of civilians." (20) This seems the more suitable to naming terrorists, but it faces significant problems, as well. In the absence of any authoritative deployment of the term, terrorists themselves have adopted the word to describe the activities of the tyrannical pro-western national regimes against which the terrorists act. Gaining back the language necessary to describe terrorists, Winter avers, depends upon re-establishing the authority of religious scholars in defining Islamic terminology.

Waleed El-Ansary (Huda, 63-71) agrees with Winter and Streusand that terrorists have "hijacked" the language of *jihad*, but he is dubious about several alternatives that have been offered. Drawing upon the thought of Shaykh Ali Goma'a, El-Ansary rejects the terms *hiraba* and *irhab* due to ambiguity of their usage in the Quran and their lack of fit with what terrorists actually do. *Hiraba*, for instance, suggests highway robbery, but terrorists are rarely motivated by profits. Following Goma'a, El-Ansary favors the term *irjaf*. This word connotes a violent commotion, as would be produced by a natural disaster. The Quran only uses the root of this term once in social context, to suggest an action by "the hypocrites" that would give rise to immediate rejection by the Muslims. (33:60) Such hypocrites, according to the Quran will be arrested and put to death.

This is doubtless an argument that will continue. In addition to the use of the root of *irjaf* in the thirty-third *sura* of the Quran, it is also used in 73:14 to discuss the Day of Judgment: "One day the earth and the mountains will be in violent commotion (*tarjufu*)." If El-Ansary were to succeed in his argument for *irjaf*, one wonders how long it would take terrorists to argue that they are the "commotion" that comes as judgment from God against their targets. Whatever the hurdles, however, finding a functional concept to name terrorism is imperative. Rhetoric is one of the most important weapons in war.

THE WAR ON TERROR

But are we involved in a war on terror at all? The Obama administration has rejected the Bush-era language of "war on terror" in favor of "the long war." Others advocate moving beyond the language of war altogether. These issues are at the center of several of the essays

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in *Just War on Terror.* Richard Lock-Pullan (37-52) argues that the idea of a war on terror was built upon the Bush administration's Manichaean theological worldview. Drawing upon Reinhold Niebuhr and William Cavanaugh, Lock-Pullan argues for an anti-Manichaean public theology that would remedy the errors of the Bush era. I am doubtful of the viability of joining Niebuhr's realism, which emphasized criticism of institutions, with Cavanaugh's high ecclesial communitarianism. Still, both Niebuhr and Cavanaugh do provide resources for the kind of project in which Lock-Pullan is interested.

Michael Howard (Fisher & Wicker 55-62) also sees the war on terror as tied to Manichaeanism, but he is concerned not with the Bush administration, but rather with the recent defense of the concept of a "war on terror" offered by Philip Bobbit in his book *Terror and Consent.* On Howard's reading, Bobbit sees a world in which nations are beleaguered and transnational forces are empowered. In fact, according to Howard, Bobbit suggests that in some cases (as with Al-Qaeda) we should now consider these transnational actors as states. Bobbit further outlines two different options for state legitimacy: consent and terror. In the present then, Bobbit advocates a war to prevent those who would establish a new world order legitimized by terror.

Howard is convinced that in constructing the world in these terms Bobbit has made several mistakes. First, Bobbit perpetuates an American tendency to divide the world into zones of freedom and democracy and zones of tyranny. This oversimplifies the situation. Most states, Howard notes, are not built upon consent, but upon acquiescence. Further, no state exists without the use of coercion, which creates terror in at least some section of the populace. Second, rather than thinking of *peacekeeping* in the contemporary international system, Bobbit has jumped to *war.* Armed conflict may be a tool for keeping the peace within the new period of tension and conflict we have entered, but it should be recognized as that, and not given the pride of place to name the entire period.

Brian Wicker (Fisher & Wicker 63-78) also responds to Bobbit's recent scholarship. Looking out on Bobbit's world, where national boundaries are collapsing into a global market place, Wicker sees the dangers that Bobbit suggests. However, Wicker seeks out quite a different model from Bobbit's to solve the problems. Reflecting decades of Roman Catholic social thought, Wicker finds the problems of globalization constitute reasons for accepting a new and more orderly international society. He believes that the global Christian Church

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provides an ideal model of what this might look like. The Church, as he sees it, is a sacramental, almost organic, structure that "cherishes" diversity within its unity.

David Fisher's essay (Fisher & Wicker 79-91) rounds out the articles offered in response to Bobbit. Fisher's focus is narrower than his colleagues. He is concerned specifically about Bobbit's justification of "preclusive" wars—wars that are fought in order to deny terrorists the opportunity to gain access to weapons of mass destruction or prepare attacks upon sovereign states. Arguing from classic Just War sources, Fisher finds that Bobbit has pushed too far in his analysis. The "degree of certainty" required for justified violence is simply not available in most situations. As such, in the contemporary world, it seems, moral states must resign themselves to accepting the constant possibility of attack.

Bobbit's short response to these critiques suggests that he is more interested in clarifying his claims than retreating from them. His comments suggest that Howard and Wicker have overstated the extent to which he sees territorial states waning in the near future. Such states will, for the foreseeable future, be the most important actors in global affairs. Nor, Bobbit clarifies, did he mean to claim that Al-Qaeda *is* a state. He had claimed that the terrorist organization "might be a virtual state" on his analysis. (200) Further, Bobbit claims to recognize that contemporary states can be mixtures of consent and terror. Bobbit's treatment had required more substantive evidence of material support for terrorist organizations than he takes Fisher's essay to have suggested. This said, he is unconvinced that he ought at this point to change his rhetoric given the critiques. The activities of the past decade have, he claims, constituted a war, and that war is properly being waged against those who would use terror to legitimate their claims to authority.

Fisher's case from classical sources is sound, but it needs to be remembered that just war thinking is a living tradition. As such, it must adjust to new situations. It is not clear to me that Fisher has done enough work to engage with claims that a changing world requires changes in how we understand the just war criteria themselves.

Of the three responses to Bobbit, Michael Howard's is the most penetrating. If Bobbit's view of the world is to be challenged, it will be on grounds similar to Howard's. At present, I will simply note that Bobbit and Howard have proposed constructions of the world that are well worth our consideration. There are costs and benefits involved in following one or the other, and I suspect that in the near future we will

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need representatives of each perspective in order to steer a responsible path in the world.

I find myself less convinced by Brian Wicker's proposals. It is not that I disagree with him on the desirability for a new international order, but rather that I find his idyllic construction of Christian ecclesial structures to be unconvincing. Given the controversial political activities of the American Catholic Bishops on issues like contraception and homosexual marriage, it does not even seem necessary to draw upon the long history of ecclesial strife within European history to point out that the Church rarely lives up to billing as a community of harmonious diversity. Given this, it seems likely that we will be left to fend for ourselves without a new international order for the time being.

If Niaz Shah is correct in his analysis of the war on terror, it is unfortunate that we have only the international order that we do. Shah concludes his book with a case study of the battle amongst the *Terik-i-Taliban* Pakistan (TTP), the Pakistani army, and the Americans in Pakistan. For Shah the most accurate word for the war on terror would be "illegal." After drawing upon the writings of the Afghani Taliban to provide a local illustration of the laws of *qital*, Shah argues that according to standards of either the Islamic law of *qital* or international law, all parties have participated in illegal activities. Evidence suggests that all have failed in adequately respecting the distinction between combatants and non-combatants. Further, both the TTP and Pakistani forces have resorted to means such as torture and intimidation in order to achieve their ends. America has probably violated Pakistani sovereignty, and has, with the use of unmanned drones, struck fear into the populace of Pakistan.

Exactly what Shah meant to gain in this application is not clear. I have previously indicated my skepticism about the extent to which militant Islamists would accept the legitimacy of *shari'a* interpreted by outside authorities. Shah's efforts to bring *shari'a* closer to home by looking at Afghani Taliban documents is helpful. But his work here is rendered questionable by his assertion that in the face of their silence on the issue the Taliban must rely on Hanafi precedent in distinguishing between combatants and non-combatants. (110) Their practice suggests that they do not reach the same conclusion, and given Bin Laden's *fatwas*, there are certainly other precedents they may draw upon. Shah's condemnation of the United States also overreaches. It cannot be the case that causing fear in a populace is against international law. (134) If it were, international law would require the elimination of war.

Even so, let us allow that most of Shah's conclusions are valid.

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Granting such seems to lead to the conclusion that no regime of law seems likely to sort out the conflict in and around Pakistan. In practice, the parties involved seem to recognize no law as authoritative. As such, the complementary approach seems not to offer any great advantage over the attempt to apply international law alone. Neither one is functional in restraining the parties involved.

I actually suspect that the situation is slightly less dire than this suggests. The United States is not intentionally, directly targeting non-combatants. Doing so would be neither morally acceptable nor strategically rational. Further, evidence suggests that even Osama Bin Laden was, toward the end of his life, aware that the al Qaeda "brand" had been tarnished by its association with killing non-combatants. Drawing upon such evidence and arguments would have strengthened Shah's position. Indeed, if Shah weakened his thesis to claim not that militants would be personally convicted by the deployment of *shari'a* law, but rather that militant positions would be weakened because of the influence of public opinion if *shari'a* were deployed, he would have a more clearly defensible proposal.

CONCLUSION

Inevitably, every analysis of the ways others construct the world depends upon and produces its own construction of reality. So what can we say about the reality that emerges from the dialogue between these texts? Islam is currently in a process of metamorphosis. Within this process, the shifting of structures of institutional authority and grammar are closely related. The *ulama*, national governments, and individual reformers (progressive and militant, western and non-western) are competing to be recognized as the arbiters of Islam. Each has a vision of the future of the Islamic world, and each describes the world in ways that anticipate this vision. Militant Muslims valorize themselves as jihadists. Progressive Muslims seek to lexically undercut militants. Without any universally authoritative voices, the arguments will continue.

The crisis of authority in Islam has been ongoing for several decades now, as *salafists* have risen to challenge the *ulama*. Even within this feud, however, the contestants have been agreed on the broad structure of *shari'a* reasoning. While there have been disagreements about the space for *ijtihad* (reason) and the qualifications for participating in *shari'a* reasoning, all have agreed that Islamic arguments are primarily about *shari'a* and draw primarily from the

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Qur'an and the *hadith* (reports of the activities of the Prophet). Today, especially in progressive forms of Islam, we see agitation to move beyond the boundaries of even this level of agreement. While I have voiced questions here about the effectiveness of drawing upon sources such as statements about international human rights, it is clear that there is a segment of Islam that is open to such moves.

In an ever more globalized world, it is impossible to keep such arguments behind closed doors. The positions of traditionally non-Islamic actors have come to directly influence the development of Islam. As concerns the naming of terrorists, even non-Muslim commentators and governments participate in some of these arguments in order to shape the ongoing conflict in the minds of observers and participants.

The question of whether Islam is a "religion of peace" is also influenced by the construction of Islam by non-Islamic actors. The contemporary interest of Islamic scholars in peace-making is sensible given recent conflicts involving Muslim actors, but, as Tim Winter suggests, it is also a reaction against overly militant constructions of Islam produced by non-Muslim critics.

More broadly, Muslim and non-Muslim scholars face questions about how to construct the thought-world in which the conflict with terrorists takes place. How the Muslim world looks at the West, and correlatively whether or not Muslims find the values of the West to resonate with their own values, depends to great degree on how non-Muslim countries comport themselves in the current conflict. Thus, even while America speaks about bringing home troops from the Middle East, it remains important to examine whether and in what ways there is an ongoing "war" on terror.

In the midst of these discussions the scholar can feel as if she or he is standing on nothing more than shifting sands. When even the rules for arguing come into question, it is easy to lose a sense of balance. In this context it is important to mark why so many concepts have become essentially contested. It is not only because we are unclear about what is the case in the present. It is because we are participating in arguments about which constructions of the world will come to define the future.

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