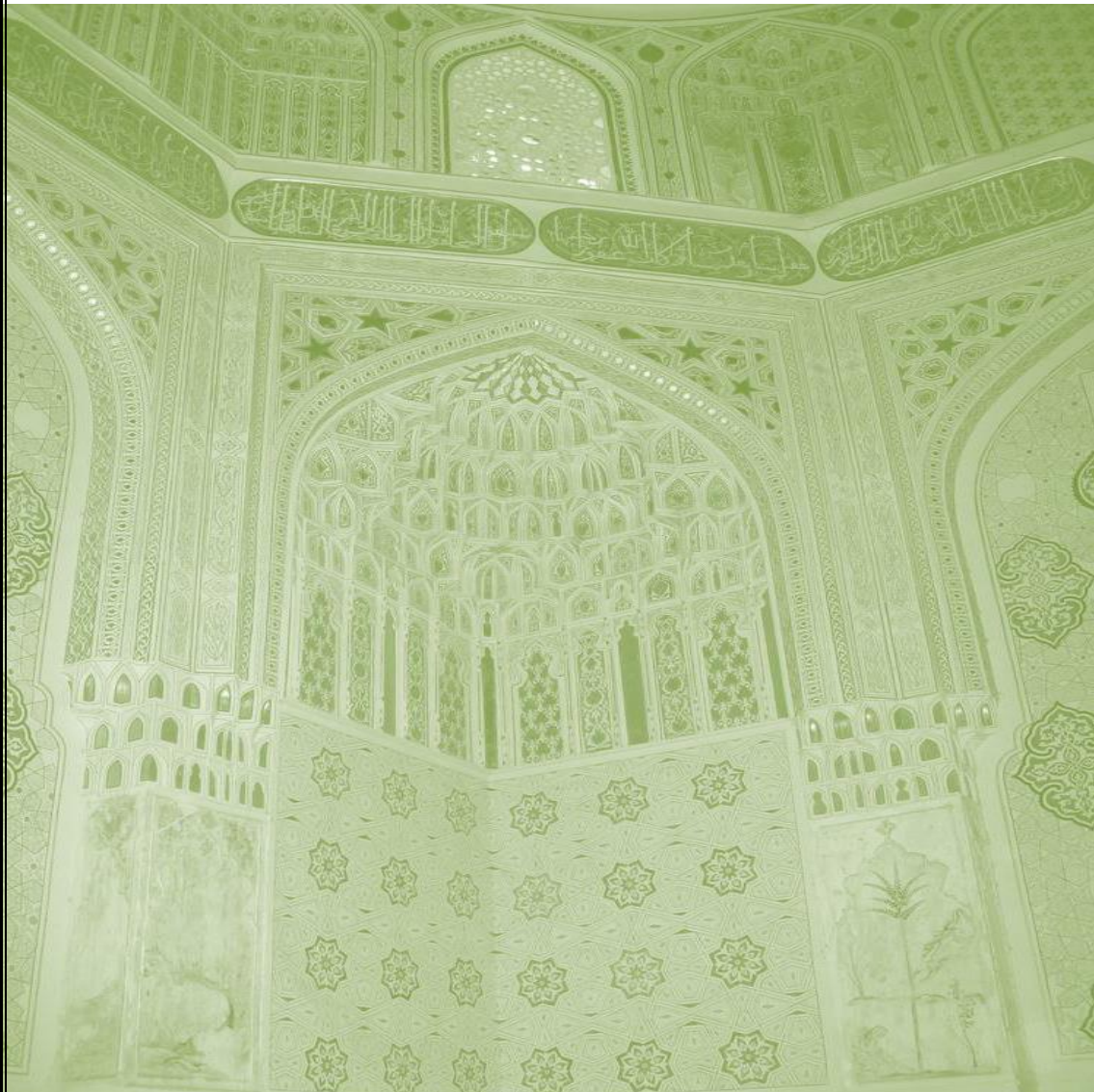


# Waikato Islamic Studies Review

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THE UNIVERSITY OF  
**WAIKATO**  
*Te Whare Wānanga o Waikato*

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University of Waikato Islamic Studies Group  
Studies in Religion Programme, School of Social Sciences  
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## **A Tribute to Professor Douglas Pratt**

On behalf of the University of Waikato Islamic Studies Group, as Editor it is my pleasure to dedicate this edition of the Review to Professor Douglas Pratt for his contributions to studies in Islam, to his teaching and to his erudite scholarship throughout what has been a distinguished and invaluable career at the University of Waikato.

Douglas Pratt was my teacher, mentor, colleague, and above all, my friend. Throughout my years at Waikato University, I have been very fortunate to have learnt from many great teachers. Of these, Douglas Pratt is one of the best. I was his student from 1992 to 1996. I sat in several of Professor Pratt's classes in the early days of my tertiary education, including his 101 "Major World Religions" through to his "Middle East Religions: Judaism and Islam", and learned more about his vast field of scholarship when I became a post-graduate student. Like so many others, I have remained interested in his research and his corpus of literature over the many years since. My own studies and research have been considerably enhanced through my ongoing interactions with the Professor. My strongest impressions of Douglas are those I have of him teaching, with his personal passion and emphatic drive.

When I was a graduate student, Professor Pratt introduced me to Simon Gray and Morteza Shams and, together, we established the University of Waikato Islamic Studies Group. With Professor Pratt's leadership, support and scholarship, our modest group has grown to include members and contributors from around the world and staged a range of significant events and activities concerning studies in Islam. This includes regular seminars, a conference and a symposium, as well as produce the Waikato Islamic Studies Review, a regular graduate academic publication that creates an

opportunity to run essays on Islam and Muslim themed topics. Much that was good in my academic career followed from that opportunity.

Professor Pratt has made a hugely significant contribution as a religious studies scholar and his literary corpus is well-known. Perhaps I am not the best person to articulate the width and breadth of his scholarship, but I want to state my impression – as a student who pondered the issues, books, classes and questions presented by the Professor. It is no exaggeration to say that many of his academic points remain unparalleled beacons of hope in our era, an intellectual light in a new dark age perchance. Professor Pratt has aided our students, our youth, our society even, through his emphasis on fair play and balanced reason. We all know that his helpful classroom questioning of his students invariably demonstrated the limitations of our own personal knowledge, whilst motivating us towards further study. His talents are often described as the “Socratic” approach and I can safely conclude that the Professor has trained a generation of profound thinkers and scholars.

Recently, I again experienced first-hand Professor Pratt’s dual role as teacher and scholar, and his genuine commitment to interfaith dialogue between Christians and Muslims. In addition to his own research and work with the University of Waikato Islamic Studies Group, I worked recently on a chapter for Dr Erich Kolig's esteemed 2016 book *Muslim Integration: Pluralism and Multiculturalism in New Zealand and Australia*. I sent a draft of my analysis to Professor Pratt politely requesting his critical feedback and advice. His reply was enthusiastic and generous, as always, and he freely gave me a detailed commentary about how my own research might be improved. His sage insights, borne of a lifetime in academic work, ranged widely over the subject. His wisdom led me to re-examine each paragraph in even greater depth. He freely gave me some citations to similar and related works that allowed me to comprehend the issues better than I had beforehand. The professor had not only a scholar’s sense of the various

relevant cerebral debates and hermeneutical paradigms weighing on any given issue, he also had the professional recall of a paid historian and could recollect volumes of pertinent literature. I was overwhelmed and grateful.

Both the Bible and Quran warn of the pitfalls of pride, so I will not say that I am proud to have been Professor Pratt's student at the University of Waikato. Rather, I will say that I am exceptionally happy to have studied under and with the professor. I am exceptionally happy to count myself amongst his students today. I join his many admirers in wishing Professor Pratt well.

Professor Pratt was always constant in the quality, efficiency and rigor of his teaching and scholarship. He was dedicated to the welfare, happiness and enlightenment of his students and committed to their learning. Few individuals in New Zealand have undertaken so much, intellectually, for interfaith dialogue between Christians and Muslims. It is no exaggeration to state that my life was but one of thousands of lives he touched and improved. I am grateful to have known Professor Douglas Pratt.

Sincerely,

Abdullah Drury  
Editor: Waikato Islamic Studies Review

# Remote Controlled Counter-Terrorism: The Legal Aspects of Drone Strikes in Muslim Countries

**Aref Shams**

Aref is a PhD candidate with the Faculty of Law, University of Waikato where he recently obtained his LLB with First Class Honours, and is also an Associate Research Member with the University of Waikato Islamic Studies Group.

**Abstract:** *Terrorism has been a difficult challenge for the international community, threatening the security of many nations and leading to abhorrent and tragic violations of human rights. Therefore, the efforts in preventing and confronting terrorism must be an international priority. However, the importance of compliance with international human rights and the laws of armed conflict must not be forgotten when fighting a form of their violation. Lethal drone strikes have become a controversial part of the war on terror. These strikes, whether under the umbrella of the war on terror or otherwise, affect many Muslim countries. Naturally, they induce feelings of anguish, fear and despair as these strikes are possible in an age when the international community is supposed to be committed to human rights more than ever. These controversial strikes have caused many to question whether there are any legal justifications behind them and whether the conduct of these strikes adhere to the laws of armed conflict. This paper is an effort to revisit the legal arguments that have been raised in answering these questions, particularly at a time when the US is seemingly focusing on its military might to address what it perceives as geopolitical threats. Also of particular interest is the question of the responsibility of the governments of the affected Muslim countries through their alleged consent to the drone strikes.*

## Introduction

Unmanned aerial vehicles (drones) are becoming increasingly popular among many nations, with even the New Zealand Defence Force considering the possibility of acquiring surveillance drones.<sup>1</sup> They have also been a popular weapon in the US war on terror. This paper solely focuses on the question of lethal drone strikes. Such strikes have been conducted in many Muslim countries for the past several years and in some countries for more than a decade. The proliferation of these weapons to conduct extra-

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<sup>1</sup> "Drones set to guard coast" *The New Zealand Herald* (online ed, Auckland, 7 September 2014).

judicial killings raises pertinent questions regarding the legality of the strikes. These questions are not only of interest to the Muslim countries, in whose territory strikes occur, but also to the entirety of the international community, as the principles of international humanitarian law (IHL) need to be stringently adhered to for the administration of international justice and order.

This paper is a brief study of the legal aspects of drone strikes. In part II, this paper seeks to provide a brief outline of the history of such strikes. Part III will discuss the legal justifications for recourse to interstate force in Muslim countries, or *jus ad bellum* (right to war). Subsequently, part IV analyses whether the conduct of these strikes meet the rules of engagement of IHL, or *jus in bello* (justice in war).

### **A Brief Recount of Drone Strikes in Muslim Countries**

The use of drones, historically, has been linked with Muslim countries. Although surveillance drones were first used by the US in Vietnam in 1960s they were later used in Bosnia and Herzegovina, and Kosovo in 1990s.<sup>2</sup> Since the proliferation of lethal drones, Muslim countries have developed strong sentiments against these new weapons. The US, Israel<sup>3</sup> and the United Kingdom<sup>4</sup> have used these weapons in Muslim countries. This paper mainly focuses on the US strikes, as they are the greatest in number and have been the centre of attention and controversy on many occasions due to the civilian casualties sustained.

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<sup>2</sup> Stuart Casey-Maslen “Pandora’s box? Drone strikes under *jus ad bellum*, *jus in bello*, and international human rights law” (2012) 94 IRRC 597 at 599.

<sup>3</sup> For instance, Israel has conducted lethal strikes in Sinai. See “Report: Israel Has Conducted Drone Strikes against Terrorists in Sinai” *The Jerusalem Post* (online ed, Jerusalem, 11 July 2016). Israel has also seemingly conducted strikes in Syria. See “Syrians Report Israeli Drone Strike Kills Commander of pro-Assad Militia” *Haaretz* (online ed, Tel Aviv, 19 March 2017).

<sup>4</sup> Most recently operating drones in Syria and Iraq. See “UK drone pilots to get medals for killing from 2,000 miles outside the combat zone” *The Independent* (online ed, London, 20 September 2017).



Some of the most affected countries include Pakistan, Afghanistan, Yemen and Somalia,<sup>5</sup> as well as Iraq, Syria and even Egypt.<sup>6</sup> Naturally, and due to the clandestine nature of the strikes, the data on the number of strikes and the number of casualties are not entirely precise. The Bureau of Investigative Journalism estimates a total of 6791 to 9870 total killed in Pakistan, Afghanistan, Somalia and Yemen.<sup>7</sup> The question of the number of civilian casualties is even more problematic, as different countries and organisations have different criteria for considering a person to be a civilian in the context of the drone strikes.<sup>8</sup> Pakistan, which has one of the highest number of recorded civilian casualties has had anywhere between 424 and 969 civilians killed since 2004, with at least 172 of them being children.<sup>9</sup> What is clear is that since the early years of the 21<sup>st</sup> century drone warfare has been an integral part of the campaign against non-state armed groups operating predominantly in the Middle-East and North Africa region. The targets of these lethal strikes are the usual suspects. For instance, in Pakistan the US targets the Taliban (both the Afghanistan and Pakistani Taliban), the Haqqani network and al-Qaeda.

The appeal of drones to the countries conducting counter-terrorism is self-evident. Drones are discrete weapons and their use involves little military personnel cost. This makes their use politically expedient. Furthermore, drones are particularly accurate weapons<sup>10</sup> that allow the users to reach the most remote regions of Afghanistan, Pakistan, Somalia and Yemen.<sup>11</sup> These are target areas that have proven to be a

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<sup>5</sup> See “Drone Warfare” (22 September 2017) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>6</sup> Above n 3 and 4.

<sup>7</sup> Above n 4.

<sup>8</sup> This point will be further discussed under part IV of this paper.

<sup>9</sup> “Drone Strikes in Pakistan” (22 September 2017) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>10</sup> Drone pilots have commented that they can target a sniper in a window of a building, or shoot down an alleyway between three-story buildings on either side. See W.J. Hennigan “The U.S. is now routinely launching ‘danger-close’ drone strikes so risky they require Syrian militia approval” *Los Angeles Times* (online ed, Los Angeles, 15 August 2017).

<sup>11</sup> James S. Robbins “Remote Control Counterterrorism” (2010) Jewish Policy Center, [www.jewishpolicycenter.org](http://www.jewishpolicycenter.org)

headache for the US to access in the past. Furthermore, the missiles fitted to drones mostly possess a smaller blast radius in comparison with those used by fighter jets,<sup>12</sup> theoretically making drones even more discriminate than other conventional weapons before them. Therefore, the ability to remotely strike targets within these areas, with accuracy and with no military personnel cost and little civilian casualty could make drones the ideal counter-terrorism weapons, or so it is argued.<sup>13</sup> This paper endeavours to point out the legal difficulties that may be raised.

Throughout the years following 9 September 2001, the US has been conducting drone strikes with differing strategies. For instance, in the case of Pakistan, the strikes began in 2004 and initially targeted high-ranking militants.<sup>14</sup> With the election of Barack Obama came a different strategy. The CIA began aiming for the disruption of the non-state groups' activities at all levels. This meant an increase in the number of strikes, with the high value targets being replaced with virtually anyone the CIA deemed to be connected to its target non-state groups.<sup>15</sup> From 2004 to 2009 there were 51 strikes in Pakistan, while in 2010 alone, the CIA carried out 128 strikes.<sup>16</sup> However, as the controversies around the programme grew in Pakistan, the US reverted back to its initial strategy of striking high-value targets.<sup>17</sup> In fact, there were only 3 strikes in Pakistan in

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<sup>12</sup> Maslen, above n 2, at 607.

<sup>13</sup> See again James S. Robbins, above n 11.

<sup>14</sup> Mark Mazzetti "A Secret Deal on Drones, Sealed in Blood" *New York Times* (online ed, New York, 6 April 2013).

<sup>15</sup> See Greg Miller and Bob Woodward "Secret memos reveal explicit nature of U.S., Pakistan agreement on drones" *The Washington Post* (online ed, Washington DC, 24 October 2013). The Post (according to exposed documents) claims that the CIA targeted 17 people when observing the men conducting "assassination training, sparring, push-ups and running." The CIA's suspected the compound to be a Taliban training camp, as it was linked by vehicle to an al-Qaeda facility hit three years earlier. The Post continues with further examples, showcasing the extent to which the US relied/relies on circumstantial evidence, and highlighting the strategy that was being pursued at the time.

<sup>16</sup> "Obama 2010 Pakistan drone strikes" (10 August 2011) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>17</sup> Obama's last strike in May 2016 targeted Mullah Mansour the leader of the Afghani Taliban. He was killed accurately and with minimal collateral casualties. See "US drone attack violation of Pakistan's sovereignty, says PM" *Dawn* (online ed, Karachi, 23 May 2016).

2016<sup>18</sup> and there have been 5 strikes in 2017.<sup>19</sup> Elsewhere, the US also uses drones to support ground troops. The accuracy and the lesser blast radius of their missiles make drones the ideal weapons for supporting ground troops in a civil war theatre such as Syria.<sup>20</sup> Since the new administration has taken office in the US, there are renewed concerns regarding the expansion of the use of drones once again. President Trump's new strategy for Afghanistan, unveiled on 21 August 2017, is now a strong indication of this possibility.<sup>21</sup> Trump specifically threatened Pakistan with increased pressure for allegedly providing a safe haven to militant groups.<sup>22</sup> Therefore, it is possible to witness the US reverting to its strategy of targeting low-level fighters and increasing the number of strikes.

Before moving on to the legal analysis, a quick caveat must be raised. Although this paper only discusses the legal aspects of drone strike in Muslim countries, the policy and ethical considerations are not to be ignored by the reader. A sound counter-terrorism policy, such as the UN counter-terrorism strategy,<sup>23</sup> also addresses conditions conducive to the spread of terrorism. Drone strikes, in many instances, may in fact become a part of the cycle of violence that spreads terrorism, rather than an effective measure to contain and counter terrorism.<sup>24</sup> However, these issues are beyond the scope of the present paper.

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<sup>18</sup> "Obama 2016 Pakistan drone strikes" (11 January 2016) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>19</sup> Jessica Purkiss "Drone strike hits tribal areas as US-Pakistan tensions rise" (18 September 2017) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>20</sup> W.J. Hennigan, above n 10.

<sup>21</sup> See David Nakamura and Abby Phillip "Trump announces new strategy for Afghanistan that calls for a troop increase" *The Washington Post* (online ed, Washington DC, 21 August 2017). Trump pledged to target the terrorist threats that emanate from the region.

<sup>22</sup> Julian Borger "Trump to expand US military intervention in Afghanistan" *The Guardian* (online ed, London, 22 August 2017).

<sup>23</sup> See *United Nations Global Counter-Terrorism Strategy: activities of the United Nations system in implementing the Strategy A/66/762* (2012).

<sup>24</sup> Pakistan's military chief said as much when objecting to the 13 June 2017 US strike in Pakistan. See Purkiss above n 19.

## Legal Justifications for Recourse to Interstate Force

Principles of *jus ad bellum* (right to war) govern the legality of recourse to force to determine whether the war is just and legal. For the drone strikes to be legal, the first leg of the legal test is to see whether the use of military force is justified or not.

Therefore, this part of the paper examines the legal justifications for conducting drone strikes. Article 2 of the UN Charter<sup>25</sup> refrains countries from the threat and use of force against the territorial integrity of any state. Taking of military measures will generally be a violation of Article 2(4).<sup>26</sup> There are three legal bases for use of force in another state's territory: self-defence, authorisation by the UN Security Council under a Chapter VII resolution, or the consent of the territorial state. This is an exceedingly sensitive area of international law, as any cursory reading of history shows the international community's Sisyphean struggle against the unjustified use of warfare throughout the ages.<sup>27</sup>

The UN Security Council resolution 1386<sup>28</sup> gave a mandate to the International Security Assistance Force operations in Afghanistan, under the umbrella of the US war on terror. However, this resolution specifically addresses the situation in Afghanistan and does not cover the drone campaign in the other Muslim countries. Therefore, self-defence and consent will also be briefly discussed below.

*Self-Defence:* The US claims to conduct its drone strikes in self-defence against terrorist groups in Pakistan, Yemen and other Muslim countries.<sup>29</sup> Article 51 of the UN Charter

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<sup>25</sup> UN Charter Article 2(4).

<sup>26</sup> Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (OUP, Oxford, 2010) at 26.

<sup>27</sup> Cases decided at the International Court of Justice (ICJ) maintain as much. See for instance *Corfu Channel Case (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4 at 35. ICJ held that interventions must not find a place in international law because of the risk of hindering the administration of international justice.

<sup>28</sup> SC Res 1386, *on the situation in Afghanistan*, S/Res/1386 (2001).

<sup>29</sup> "Remarks by the President at the National Defense University" (23 May 2013) The White House, [www.whitehouse.gov](http://www.whitehouse.gov)

upholds the right of self-defence against an armed attack.<sup>30</sup> The general rule regarding the justifiability of self-defence comes from the *Caroline test*.<sup>31</sup> The fact that the strikes are mostly conducted against non-state groups does not automatically render the self-defence argument null.<sup>32</sup>

For self-defence to be lawful under Article 51, there must be a necessity of self-defence with an instantaneous and overwhelming nature, leaving no other means or a moment of deliberation and a proportionality of the use of force.<sup>33</sup> In terms of necessity, the argument that the US has no other choice but to use drone strikes in the mentioned countries is weak, as the US is not faced with a continuous and overwhelming attack that leaves no other alternatives. Furthermore, the self-defence argument was much more persuasive in the immediate aftermath of the 11 September terrorist attacks, but is becoming increasingly weak with the passage of time. In terms of proportionality, part IV discusses further relevant issues. Moreover, for the justification under Article 51, the use of force must be immediately reported to the Security Council for it to be lawful.<sup>34</sup> The US has not done so,<sup>35</sup> which is a by-product of the clandestine nature of the strikes. The UN reports have recommended the US to report the strikes immediately to the UN Security Council to ensure the legality of its conduct,<sup>36</sup> which is a more than reasonable recommendation to promote transparency and accountability in the use of drones. Overall, justifying the strikes as self-defence is at best questionable and may be argued to fall short of the requirements of international law.

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<sup>30</sup> UN Charter, Article 51.

<sup>31</sup> Andrew Clapham and Paola Gaeta (eds) *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press, Oxford, 2014) at 554. XX

<sup>32</sup> For a comprehensive analysis see Alberto Alvarez-Jimenez “From Al-Qaida in 2001 to ISIL in 2015: The Security Council’s Decision on Terrorism and Their Impact on the Right to Self-Defense Against Autonomous Non-State Actors” (2017) 26 *Minnesota Journal of International Law*, 345.

<sup>33</sup> Maslen, above n 2, at 603.

<sup>34</sup> See Philip Alston, ‘Study on Targeted Killings’ (2010) Human Rights Council, UN Doc A/HRC/14/24/Add.6 at [40].

<sup>35</sup> Micah Zenko “Transferring CIA Drone Strikes to the Pentagon” (April 2013) Council on Foreign Relations, [www.cfr.org](http://www.cfr.org)

<sup>36</sup> Ben Emmerson, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism* A/68/389 (2013) at [113].

*Consent*: Much of the commentary on drone strikes revolves around the culpability of the states using drones and not enough attention is given to the role of the states on whose territory these strikes take place. Thus, this paper also focuses on the significance of the host states' consent to the use of interstate drone warfare. Consent has been hailed as the foundation of international law by the International Court of Justice (ICJ) in the *Lotus* case.<sup>37</sup> The common law principle of *volenti non fit injuria*<sup>38</sup> certainly holds water in international law. Article 20 of the Draft Articles on the Responsibility of States (DASR), prepared by the International Law Commission, maintains that the wrongfulness of international acts affecting other states will be precluded following the affected state's consent.<sup>39</sup>

Consent must be valid under international law to render an international wrongful act legal. Namely, valid consent must be clear, unambiguous, may not be presumed and may be vitiated by error, fraud, corruption or coercion. Furthermore, consent must be given by an authorised official representing the government and the limits of consent must be respected.<sup>40</sup>

President Hadi of Yemen has stated that he personally approved US drone strikes, and described drones as a technical marvel that has helped the counter-insurgency efforts in Yemen.<sup>41</sup> There are also reports that President Sisi's administration of Egypt has blessed drone strikes conducted in its territory by Israel.<sup>42</sup> Similarly, the former Pakistani president, Pervez Musharraf, also admitted to permitting the strikes in

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<sup>37</sup> *S.S. Lotus (France v Turkey) (Judgment)* [1927] PCIJ Series A, No.10 at 18.

<sup>38</sup> Literal translation is 'to a willing person, injury is not done.' Most notably a defence of consent in a negligence claim. Consent absolves the negligence liabilities, as the negligent acts were done at the behest of the victim/claimant. See for instance *Titchener v British Railways Board* [1983] 1 WLR 1427.

<sup>39</sup> *Draft Articles on the Responsibility of States for Internationally Wrongful Act, with Commentaries* [2001] vol 2, pt 2 YILC 31, article 20.

<sup>40</sup> *DASR*, above n 39, at 73.

<sup>41</sup> Greg Miller "Yemeni president acknowledges approving U.S. drone strikes" *The Washington Post* (online ed, Washington DC, 29 September 2012).

<sup>42</sup> See "Report: Israel Has Conducted Drone Strikes against Terrorists in Sinai" *The Jerusalem Post* (online ed, Jerusalem, 11 July 2016).

Pakistan.<sup>43</sup> The UN special rapporteur, Emmerson, reported that in Pakistan there was consent from senior intelligence and military officers between 2004 and 2008.<sup>44</sup>

However, at least in Pakistan, the evolving situation means that the US cannot entirely rely on consent, which is partly the reason for the US also relying on the self-defence argument. Despite Pakistani objections to the drone strikes as early as 2009,<sup>45</sup> the Pakistani PM is known to have privately said in 2010, “I don’t care if they do it as long as they get the right people. We’ll protest in the National Assembly and then ignore it” referring to the drone strikes.<sup>46</sup> Having this statement in mind, arguments that Pakistan is no longer giving tacit consent must be assessed with the possibility of other PMs’ similar remarks in private. On the other hand, there will not be a patent proof of Pakistani consent in private due to the covert nature of circumstances. This makes arguments in favour of the presence of tacit consent problematic. There is a risk in finding tacit consent in omission of states too readily, and the risk is that this line of logic becomes a new de facto practice for the regulation of interstate force.

The technical legality aside, the responsibility that is placed on the governments of Muslim countries is a grave one. In the case of Pakistan, it may be argued that they have always been able to stop the strikes, but have been unwilling to do so. When in November 2011 NATO mistakenly killed 24 Pakistani soldiers, in the Salala incident. Pakistani officials promptly ordered CIA to stop the drone operations it ran from Shamsi air base and to vacate the base.<sup>47</sup> Pakistan, furthermore, threatened to shoot

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<sup>43</sup> “Parvez Musharraf Admits permitting ‘a few’ US drone strikes in Pakistan” *The Guardian* (online ed, London, 12 April 2013).

<sup>44</sup> Emmerson, above n 36, at [53].

<sup>45</sup> “Pakistani Bases Not Being Used for Drone Attacks: FM” *Daily Times* (online ed, Lahore, 16 February 2009).

<sup>46</sup> “US Embassy Cables: Pakistan Backs US Drone Attacks on Tribal Areas” *The Guardian* (online ed, London, 30 November 2010).

<sup>47</sup> Salman Masood and Eric Schmitt “Tensions Flare Between U.S. and Pakistan After Strike” *New York Times* (online ed, New York, 26 November 2011).

down drones which intruded on its airspace,<sup>48</sup> making it clear that this was not another public relations move, but rather Pakistan's military position. This led to the longest pause between strikes at the time, which lasted for 55 days.<sup>49</sup> Pakistan even closed a crucial NATO supply route through the Khyber Pass (in the tribal areas) until July 2012, when the US Secretary of State issued an apology.<sup>50</sup> Therefore, if Pakistan, to this day, pursues a policy that may be best understood as non-interference, it must be based on national interest as perceived by the government not an inability to put an end to the strikes.

There has not been a year without drone strikes in Pakistan since 2004. However, in fairness, in recent years Pakistan has been more forceful in its protest against the strikes, even taking the case for the cessation of the strikes before the UN General Assembly and the UN Human Rights Council.<sup>51</sup> However, Pakistan has not taken the matter to the Security Council, or used or threatened to use military force suggests that Pakistan still pursues a policy of non-interference, and facilitates the strikes.<sup>52</sup> Therefore, even if the International Court of Justice does not find the consent to be valid, Pakistan still has had an important role to play in facilitating the strikes, similar to the role of President Hadi and President Sisi in Yemen and Egypt.

The responsibility of the Muslim governments is an important point to make. The literature on this topic seldom criticises the conduct of the nations hosting drone strikes, and mostly criticises the conduct of the US.<sup>53</sup> What is more, these countries have

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<sup>48</sup> "Pakistan says U.S. drones in its Air Space will be shot down" (11 December 2011) NBC World News, Available: [www.informationclearinghouse.info/article29946.htm](http://www.informationclearinghouse.info/article29946.htm)

<sup>49</sup> "Get the data: Drone wars, Obama 2012 Pakistan strikes" (11 January 2012) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>50</sup> Eric Schmitt "Clinton's 'Sorry' to Pakistan Ends Barrier to Nato" *New York Times* (online ed, New York, 3 July 2012).

<sup>51</sup> "At UN, Pakistan demands immediate cessation of illegal drone strikes" *Dawn* (online ed, Karachi, 2 July 2016).

<sup>52</sup> Zora Ahmed "Strengthening Standards for Consent: the Case of U.S. Drone Strikes in Pakistan" (2015) 23.2 *Michigan State International Law Review* 460, at 508.

<sup>53</sup> See Alston, above n 34, at [87]-[92].



consented to the violation of international humanitarian law as will be discussed in part IV. The UN special rapporteur Heyns recommended Pakistan to respect its human rights obligations and recognize that they must not consent to the violation of international law.<sup>54</sup>

This also raises the point that the provisions of international law which regulate the use of interstate drone warfare are not adequate. There must be clear limits for the power of consent to preclude the wrongfulness of acts. Article 21 of the *DASR* is quite articulate on the limits of self-defence as a justification for the use of force, maintaining that it cannot preclude the wrongfulness of conduct in all cases, pointing out to examples of international humanitarian laws and international human rights law (specifically the Geneva Conventions).<sup>55</sup> Article 20, regarding consent, is not as explicit and only goes so far as to say that the confines (limits) of consent must be respected.<sup>56</sup> A state should not be able to consent to what itself may not conduct and consent must not become a *carte blanche*. The frustrating abuse of the ambiguity of the law by some Muslim governments has facilitated and supported the killing of thousands of their subjects. International law must be reformed to prevent such abuses. The ambiguities of international law and the weak regulation of states have also allowed the US to rely on the consent of non-state groups in the Syrian civil war to conduct its drone strikes.<sup>57</sup> If the requirements of consent regarding the use of drones are not tightened, consent of non-state actors in such conflicts can become a real threat to international peace, and the principle of non-intervention.

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<sup>54</sup> Christof Heyns, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* A/68/382 (2013) at [115].

<sup>55</sup> *DASR*, above n 39, at 74, [3].

<sup>56</sup> *DASR*, at 73.

<sup>57</sup> W.J. Hennigan, above n 10.

## Adherence to the Laws of War in Conducting Hostilities

Having discussed the legal questions regarding the rightfulness of the war, this part of the paper analyses the question of the compliance of the drone warfare with the standards of international humanitarian law, *jus in bello* (justice in war). This part particularly focuses on whether the US has complied with the standards of humanitarian law as the country that has caused the greatest number of civilian casualties. There will be a focus on Pakistan, as it has the highest recorded number of civilian casualties as mentioned in part II.

The obligations that countries must honour when using force are: precaution, distinction and proportionality.<sup>58</sup> In 2016, a US court ordered the release of documents relating to drone operations.<sup>59</sup> Among these documents is the top-secret Presidential Policy Guidance, outlining the standards for taking “direct action” against “terrorist targets”<sup>60</sup> containing a thorough nomination process for different targets<sup>61</sup> as well as the preconditions for taking lethal action.<sup>62</sup> Lethal force is instructed to be used only in cases where targets pose a continuing and imminent threat to US persons, where no alternatives to lethal action exists, and where there is a near certainty that there will be no non-combatant casualties.<sup>63</sup> These guidelines meet the US obligations under IHL. Whether US practice does conform to its obligations will be analysed below.

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<sup>58</sup> See Noam Lubell and Nathan Derejko “A Global Battlefield? Drones and the Geographical Scope of Armed Conflict” (2013) 11 J Int’l Crim Just 65 at 77. Also see Noam Lubell “Transnational non-international armed conflict” Carl Marchand and Gian Luca Beruto (eds) *The Distinction between International and Non-International Armed Conflicts: Challenges for IHL?* (International Institute of Humanitarian Law, Milan, 2016) 53 at 55. The US is in conflict with non-state groups inside Pakistan, which can be determined to be in conflict with the Pakistani government. Therefore, the conflict will be determined as non-international.

<sup>59</sup> Brett Max Kaufman “Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most” (8 August 2016) ACLU Centre for Democracy, [www.aclu.org](http://www.aclu.org)

<sup>60</sup> “Presidential Policy Guidance” (5 August 2016) ACLU Centre for Democracy, [www.aclu.org](http://www.aclu.org) (Hereinafter PPG).

<sup>61</sup> PPG, at 6.

<sup>62</sup> PPG, at 11.

<sup>63</sup> PPG, at 14-15.

In terms of taking precaution in conducting the strikes, the relevant law is deemed by the International Committee of the Red Cross (ICRC) to be customary international law,<sup>64</sup> making them applicable to the strikes. This requires the US to take all precautions to avoid and minimise incidental loss of life,<sup>65</sup> injury to civilians and damage to civilian objects.<sup>66</sup> Drones, as precise weapons, offer the US the capability to take significant precautions to avoid civilian casualties. Drone pilots have the ability to observe their targets for prolonged periods. Despite this, the strikes have mistakenly killed western hostages, children and pro-government tribal leaders.<sup>67</sup> Allegations maintain that the US officials are not able to identify their targets in many instances,<sup>68</sup> with one strike, for instance, killing 69 children under 18 in Pakistan.<sup>69</sup>

Another central doctrine of humanitarian law relates to the principle of distinction, whereby civilians and combatants are distinguished from each other in the conduct of war. This is difficult in the context of the strikes, as in many instances militants can be “farmer by day, fighter by night.”<sup>70</sup> Civilians in such contexts may be targeted if they directly participate in the hostilities,<sup>71</sup> to not allow legitimate targets to abuse the protections offered to civilians.<sup>72</sup> However, there are indications that the CIA has at times selected their target based on the patterns of life associated with terrorism, as well as physical attributes.<sup>73</sup> This is termed as ‘signature strikes.’ Signature strikes’ failings

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<sup>64</sup> Henckaerts and Doswald-Beck, *Customary International Humanitarian Law* (ICRC and CUP, Cambridge, 2005), at 51.

<sup>65</sup> Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare” (March 2010) Program on Humanitarian Policy and Conflict Research, Harvard University, [www.ihlresearch.org](http://www.ihlresearch.org), at 124.

<sup>66</sup> Henckaerts and Doswald-Beck, at 53.

<sup>67</sup> Jane Mayer “The Predator War: What are the risks of the CIA’s covert drone program?” *The New Yorker* (online ed, New York, 26 October 2009).

<sup>68</sup> Scott Shane “Drone Strikes Reveal Uncomfortable Truth: U.S. Is Often Unsure About Who Will Die” *New York Times* (online ed, New York, 23 April 2015).

<sup>69</sup> Ben Emmerson, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering terrorism* A/HRC/25/59 (2014), at [47].

<sup>70</sup> Alston, above n 34, at 19.

<sup>71</sup> Alston, at [58].

<sup>72</sup> Alston, at 19.

<sup>73</sup> Spencer Ackerman “Obama claims US drone strikes have killed up to 116 civilians” *The Guardian* (online ed, London, 1 July 2016).

in correctly making a distinction between civilians and combatants have been reported on multiple occasions.<sup>74</sup>

Despite the method supposedly analysing the patterns of life, in one strike the sole victim was a 68 years old woman picking vegetables in Pakistan.<sup>75</sup> It seems that these methods do not adequately meet the principle of distinction. That is the reason why independent sources reported civilian casualties to reach up to 197 in 2010 alone,<sup>76</sup> while the US estimates civilian casualties to be up to 116 during its entire drone campaign.<sup>77</sup> The UN Special Rapporteur, Emmerson, sided with the independent figures, pointing out that even such figures are likely to be underestimated because of inherent difficulties in reporting accurately from Pakistan's tribal areas.<sup>78</sup>

The principle of proportionality provides that attacks that cause civilian casualties, excessive in relation to the concrete military advantage anticipated, are indiscriminate.<sup>79</sup> This is also customary law, applicable to the strikes.<sup>80</sup> The law is silent as to the exact extent to which casualties will not be excessive, causing different assessments of what is proportionate.<sup>81</sup> Nonetheless, critics of drone strikes often point to the high number of civilian victims in contrast with the military success, while studies show that only 2 per cent of targets can be designated as 'high value.'<sup>82</sup> A shocking

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<sup>74</sup> See Greg Miller and Bob Woodward "Secret memos reveal explicit nature of U.S., Pakistan agreement on drones" *The Washington Post* (online ed, Washington DC, 24 October 2013). The Post claims that the CIA targeted 17 people when observing the men conducting "assassination training, sparring, push-ups and running." The Post continues with further examples, showcasing the extent to which the US relied/relies on circumstantial evidence.

<sup>75</sup> Emmerson, above n 69, at [54].

<sup>76</sup> "Obama 2010 Pakistan drone strikes" (10 August 2011) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>77</sup> Ackerman, above n 73.

<sup>78</sup> Emmerson, above n 36, at [32].

<sup>79</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1125 UNTS 3 (opened for signature 8 June 1977, entered into force 7 December 1978), art 51(1)(b).

<sup>80</sup> Henckaerts and Doswald-Beck, above n 64, at 46.

<sup>81</sup> Maslen, above n 2, at 613.

<sup>82</sup> James Cavallaro, Stephan Sonnenberg, and Sarah Knuckey "Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan" (25 September 2012) International Human Rights and Conflict Resolution Clinic, Stanford Law School; NYU School of Law, Global Justice Clinic, [www.law.stanford.edu](http://www.law.stanford.edu), at 29.

example of the US failings is the case of targeting of the Pakistani Taliban leader Baitullah Mehsud. Having lured in Mehsud into a public funeral with 5000 participants (by killing another militant), the CIA stroke at the funeral, killing up to 83 people, including 45 civilians and 10 children.<sup>83</sup> Mehsud escaped with his life only to be targeted in his residential compound, killing him along with one of his wives and with several children injured.<sup>84</sup> Reportedly, the CIA conducted 16 strikes and killed 321 people before managing to kill Mehsud.<sup>85</sup> The US, in hindsight, was not limited to the funeral as the only window of opportunity,<sup>86</sup> demonstrating their indifference to the principle of proportionality at the time.

The US seems to have failed in a number of its international obligations in operating the drone strikes. Although drones are inherently accurate and perhaps more discriminate weapons, the US has failed to fully use their potential to avoid civilian casualties. In other words, drones have been accurately striking the wrong targets. Therefore, even if the use of force was justified under *jus ad bellum*, part IV has outlined that the strikes would remain problematic under principles of *jus in bello* because of the way they are conducted.

### **Concluding Remarks**

The non-combatant victims of the drone strikes in Muslim countries are trapped between opportunist Muslim governments, using the ambiguities of international humanitarian law to their advantage, and western governments (led by the US) who are

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<sup>83</sup> “CIA tactics in Pakistan include targeting rescuers and funerals” (4 February 2012) The Bureau of Investigative Journalism, [www.thebureauinvestigates.com](http://www.thebureauinvestigates.com)

<sup>84</sup> Mark Mazzetti and Eric Schmitt “C.I.A. Missile Strike May Have Killed Pakistan’s Taliban Leader, Officials Say” *New York Times* (online ed, New York, 6 August 2009).

<sup>85</sup> Jane Mayer “The Predator War: What are the risks of the CIA’s covert drone program?” *The New Yorker* (online ed, New York, 26 October 2009).

<sup>86</sup> On the question of drones’ precision, NGOs claim that there are on average three strikes before a target is killed. Another shocking fact is that the hunt for Ayman al Zawahiri has left more than 70 children dead. See Spencer Ackerman “41 men targeted but 1,147 people killed: US drone strikes – the facts on the ground” *The Guardian* (online ed, London, 24 November 2014).

infatuated by military objectives rather than respecting their international obligations. Both the Muslim and western governments need to reform their conduct to meet their obligations under humanitarian law, so that the suffering of the civilians living in the affected areas may end. This is particularly crucial as drones will be increasingly proliferated in the years to come. Rigorous standards for the conduct of such strikes are not only important for Muslim countries, as the precedents set today may pave the way for other countries to abuse humanitarian law when they decide to use armed drones. Therefore, there must be a global effort to determine the applicable standards to the use of armed drones. These standards will then need to be applied universally to prevent any abuse of the weapons.

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# Refugees, Migrants, and the Fear of Islam: The Problem of Reactionary Extremism

Douglas Pratt

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**Abstract:** *This paper addresses some problems and concerns occasioned by the recent flood of refugees into Europe, mainly of Muslims from Syria and Iraq. Arguably this has stimulated the reinforcing, and prompted new forms, of exclusionary reaction against a perceived rising presence of Islam within otherwise western secular, albeit still nominally Christian, European societies. In consequence, refugee and migrant host countries are now facing the internal challenge of a reactionary home-grown extremism that is as much a threat and security issue as any concern with the potential of incoming Islamists to wreak havoc. And while the case of Europe underlies this paper, the issue of a fear of Muslims being prompted by migration of one sort or another is not limited to Europe. Furthermore, the fear of Muslims and of the religion Islam – Islamophobia – is not just an attitudinal stance. It reflects and is expressed by a range of exclusionary or negatively reactive actions that very often draw on religious tropes and imagery with respect to demonising Islam and Muslims on the one hand, and justifying exclusionary, even extreme and violent, behaviours and rhetoric, on the other. Such reactionary extremism is every bit as abhorrent and problematic as the Islamist extremism that ostensibly provoked it and against which it rails.*

## Introduction

Religious extremism is perhaps one of the most pernicious and troublesome among the many challenges with which we human beings, in our diverse societies and nations, are confronted with today.<sup>1</sup> The recent and ongoing tide of refugees coming into Europe from the troublesome hotspots of Syria and Iraq has prompted new forms of exclusionary reaction and stimulated long-standing antipathy against the presence of Muslims. The comparatively liberal, tolerant and open secular, yet still nominally Christian, European societies of recent decades are today caught up in a matrix of reactionary nationalism, jingoism, exclusivism and reactionary home-grown extremism. A new age of fascism seems upon us.

In this paper I argue that, in fact, a new form of religious extremism has emerged, one which paradoxically portrays itself as being a counter to another – the ostensibly

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<sup>1</sup> Douglas Pratt, *Religion and Extremism: Rejecting Diversity* (London & New York: Bloomsbury Academic, 2018)

‘initiating’ – extremism perceived as a real and imminent threat. For example, various forms of reactionary rhetoric and violence, with Islam and Muslims as the target, has clearly emerged. Islamophobia, the fear of Muslims and of the religion Islam, is not just an attitudinal stance.<sup>2</sup> It reflects, and is expressed by, a range of negative and reactive actions and these can be every bit as abhorrent and problematic as any Islamist extremism.

I call this mutual extremism ‘reactive co-radicalization’ and I suggest it is a key element in understanding the situation confronting modern secular societies.<sup>3</sup>

Furthermore, I argue that beneath any reasonable and rational concern with Muslim terrorism per se, the wider rejection of Muslims and Islam is a variant on the more generalized phenomenon of ‘fear of the other’, or xenophobia as such. It marks a mood of rejection of diversity that undergirds right-wing, jingoistic, and extreme nationalism as well as exclusivist religious ideology.

The effects of religious extremism are clear for all to see. The mass migrations of the last few years are not the result of natural disasters such as fire, flood, and famine – though there are examples enough of those. Neither are they simply an expression of economic privation and the desire for ‘something better’, though that motive is certainly found. The plight of the massive migratory flows of suffering peoples in recent times is attributable to but one – albeit complex – phenomenon: the outworking of extreme religious ideologies. Syrians and Iraqis are exiting their countries on mass not because of economic hardships or the effects of famine that might be the case elsewhere. They are fleeing the imposition of extreme religion. Many of the problems

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<sup>2</sup> See Douglas Pratt & Rachel Woodlock (eds.), *Fear of Muslims? International Perspectives on Islamophobia* (Switzerland: Springer International, 2016).

<sup>3</sup> See Douglas Pratt, Reactive Co-Radicalization: Religious Extremism as Mutual Discontent, *Journal for the Academic Study of Religion*, 28/1 (2015), 3-23.

that puzzle the world today are nothing less than the manifestation of an impositional religious absolutism of one sort or another.

However, while ISIS, or the Islamic State, has been – and is still – at the epicentre of much of today’s violent activity, extremism is by no means the province of Islam or Muslims alone. The contemporary rise of populist right-wing – or ‘alt-right’ – groups in western societies display an extremism that is, in effect, a mirror-image reaction to the extremism, whether real or perceived, of the ‘other’ that is labelled as a threatening ‘extremist’. The world can hardly forget the words of American President Donald Trump when, as a presidential candidate, he articulated the question: ‘What the hell is going on?’ His response, namely to advocate the shutting down of immigration in order to exclude those he regards as suspect in some way, or to erect barriers of protection – in effect to retreat into fortress America – is no more than a reactionary mirror-image to the driving ideology of ISIS which aims to create a fortress Islam. In effect, one form of extremism begets its reactionary polar parallel. And each is premised on an ideology of impositional exclusivism which results in a ‘clash of fundamentalisms’, to use Tariq Ali’s phrase.<sup>4</sup> The contemporary phenomenon of what I call reactive co-radicalization is increasingly evident. In today’s globalized and economically interdependent world, this is the context of us all. We all see this, even if we do not directly experience the effects of religious extremism today. We need to understand what the hell is going on.

At one level there appears a simple answer: humanity prefers homogeneity. Deep down we don’t like difference. We are most comfortable when we are among our own. We like, maybe, a little spice of diversity – but, really, on our terms. We need to be in control, to ensure the diversity of ‘otherness’ does not overwhelm. Too much

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<sup>4</sup> Tariq Ali, *The Clash of Fundamentalisms; Crusades, Jihads and Modernity* (London: Verso, 2002).

variety threatens. Recognize the theme? Feel like saying: ‘yes, but ...?’ There is something here that we instinctively know makes sense, yet at the same time we know it is no real answer. It is, indeed, but a simplistic response to the question of what is going on. And it is a misleading one. For variety, difference, diversity – of so many sorts – is the very stuff of life.

A garden is praised not because it consists of the same plant repeated, but because it contains a rich variety, a profusion of colour, a diversity of shape and form. The garden that is any human society is made up of a rich diversity of individuals – and nowadays in many places also of an increasing diversity of sub-groups. Ethnic, cultural, racial, linguistic and religious differences are often the markers of internal diversity within a given society, along with otherwise long-standing dimensions of social, economic and political diversity. This rich mix is the hallmark of a contemporary postmodern society. To the extent such diversity is affirmed, valued and societally supported, it makes for a vibrant and inclusive community. Such a community prizes peaceful co-existence and prosperous harmony. To the extent diversity is called into question, let alone actively rejected, then disharmony, discord and disunity reigns. And a violent rejection of various ‘others’ ensues.

Understanding the relationship between religion and extremism is, I suggest, *the* contemporary religious challenge, without equal. International travel, national economies – the price we pay for our petrol – are all impacted today not so much by the convolutions of foreign policies and international relations, nor even by global economic and political power plays, significant as they are. Rather it is impositional religious ideologies, taken to extreme and at times clashing competitively, that presently impinge upon all our lives and constitutes a defining feature of our times.

Extremism is manifested in rhetoric, attitudes and behaviours. It is at the very end of the extremism scale that violence, bloodshed and terrorism ensue. It is only relatively recently that the phenomenon of religious terrorism has been analysed and understood within a broader framework of terrorizing violence. Since the late nineteenth century, according to David C. Rapoport, terrorism has occurred in 'four successive waves'.<sup>5</sup> These are identified as anarchist terrorism, anti-colonial terrorism, the terrorism of the new left, and religious terrorism. Whereas the first arose from the perceived failure of democratic reforms, the second was a manifestation of national self-determination, and the third emerged in contexts aiming to bolster democratic reforms. However, the religious terrorism wave seemingly takes aim at both liberal democracy and secularism. While al-Qaeda was identified as the prime example of the fourth wave that dubious honour would now perhaps go to ISIS.

The problem of religious extremism is not only in respect to the proven potential of any one religion to produce it, but also with the phenomenon of a reaction to such extremism that itself is extreme. This seems, alarmingly, to be on the rise within societies that, at least since the middle of the twentieth century, have pursued policies of liberal tolerance and multi-cultural acceptance. For instance, we see this today with respect to Islamic extremism and the demonstrable radicalization emerging within and from the political right-wing of western secular countries, and increasingly impacting or involving sectors of the Christian community within them. Historically speaking, religious violence, for example in Europe, is nothing new; but it is now many centuries since it was a prominent, even daily, feature. The Wars of Religion are happily long past; the era of ecumenical détente is well and truly established so far as the intra-religious Christian context, that once fomented the violent clashes of mutual discontent, is concerned. And the Christian turn to positive internal (inter-Church or

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<sup>5</sup> David C. Rapoport, 'The Fourth Wave: September 11 in the History of Terrorism', *Current History* 100, no. 650 (2001): 419-424.

ecumenical) relational engagement has been extended into the interfaith arena.

Interreligious engagement in the cause of peaceful co-existence and human societal betterment are now well embedded.<sup>6</sup>

Religion, in varying forms, is increasingly in the frame as a critical component of contemporary terrorism and political violence.<sup>7</sup> In the case of religious or religiously motivated actors one factor is that of the religious ideology that embeds – that is, doctrinally or intellectually undergirds – the justifying narrative. Religion is by no means the full story, of course, but religion is not to be discounted and may even emerge as the lead factor – especially where there are obvious links between the terrorism and a given religion.

Reactionary antipathy in respect to a religious ‘other’ perceived as a threat is undeniably abroad. On the one hand there are examples of secular anti-religious sentiment seeking to eliminate religion from the public sphere. Religion is relegated to the sphere of private indulgence. On the other hand, where societies and nations are more overtly religious, or where religion still holds a significant place and role even within a modern secular state, there are increasing instances of inter-religious hostility as well as hostility expressed toward a specific religion. Instances of Islamic extremism, for example, can provoke a reactionary extremism from parts, at least, of the non-Muslim world. At the same time, Muslim extremism is frequently advocated within the Islamic world in response to a perception of an aggressive and impositional non-Muslim world.

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<sup>6</sup> See Anna Halafoff, ‘Encounter as Conflict: Interfaith Peace-Building’, in *Understanding Interreligious Relations*, ed. D. Cheetham, D. Pratt and D. Thomas (Oxford: Oxford University Press, 2013), 262-280.

<sup>7</sup> Tanja Ellingsen, ‘Toward a Revival of Religion and Religious Clashes?’, *Terrorism and Political Violence*, 14/3 (2005): 305-332; Susanna Pearce, ‘Religious Rage: A Quantitative Analysis of the Intensity of Religious Conflicts’, *Terrorism and Political Violence*, 14/3 (2005): 333-352.



Thus a new form of religious extremism has emerged, arguably one which portrays itself as, paradoxically, being a counter to another perceived extremism posited as a real and imminent threat. The perceived and manifest antipathy of one toward the other is reciprocated; discontent is mutual. The genesis and trajectory of the expressions of discontent, as an expression of religious extremism, can perhaps be better understood by way of reactive co-radicalization.

Religious radicalization may be viewed as an aspect of ‘increasing extremity of beliefs’ as well as behaviours supportive of conflict and violence: ‘radicalization means change in beliefs, feelings, and behaviors in directions that increasingly justify intergroup violence and demand sacrifice in defense of the ingroup’.<sup>8</sup> On the other hand, some scholars regard radicalization as involving a drive for comprehensive change: politically, culturally, and socially. For some, radicalization refers to a development that precedes and so justifies violent or otherwise extreme actions; for others, violent behaviours are a tool of the radicalization whose objectives legitimate the actions: ends justifies means. I incline more to the former, on the basis that religious extremism which can be spoken of in terms of radicalization certainly has to do with a process of change to beliefs, perceptions, feelings and other drivers of behaviour, both psychological and ideological.

The 2009 Swiss ban on the building of minarets and the 2011 Norwegian massacre carried out by Anders Behring Breivik are examples of what I have come to think of as the extremism of mutually reactive co-radicalization: the awareness by one party that another is fomenting a threatening extremism which ostensibly precipitates, within the first party, a reactive move in the direction of a like radicalization even though, paradoxically, the perceived initial extremism of the second party is eschewed

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<sup>8</sup> Clark McCauley and Sophia Moskalenko, ‘Mechanisms of Political Radicalization: Pathways toward Terrorism’, *Terrorism and Political Violence*, 20/3 (2008): 416.

and denounced. My contention is that each arises out of processes of radicalization involving sets of guiding ideas (theology, ideology) that varyingly impact persons whether individually (as with Norway's Breivik) or collectively (as with those Swiss who voted against Muslim minarets). In terms of behavioural specifics there is no comparing these two cases: one enacted death, the other simply a denial. Yet each gives evidence, I suggest, of a process of radicalizing of values, beliefs, attitudes etc. that, relatively speaking, resulted in some form of extreme outcome including the rejection of the diversity that is, indeed, represented and presented by a specific 'other'. Whilst for many it would be the Breivik case only that would be classified as a genuine example of extremism, my contention is that what we mean by 'extremism' needs to be understood more broadly, and more processively, rather than simply the manifestation of an atrocious act.

Denial of alterity, the devaluing and dismissal of 'otherness' as such, leads to the dehumanizing and demonizing of the negated other. The ideological sanctioning of a programme of imposition leads naturally to the legitimation of extreme behaviour, including violence. Each in their own way demonstrates reactive co-radicalization. I have analysed and discussed this elsewhere, in respect to the two European cases. Both expressed a form of focussed anti-diversity and gave evidence of the politics of cultural and identity threat. The Swiss case issued in a message of implicit exclusion; the Norwegian affair enacted a displaced elimination. The Swiss took fright at four minarets in their country and resolved that no more should appear; Anders Breivik killed fellow citizens as a means of expressing the rejection of Islam on the grounds of this faith being a cultural and religious threat to European identity.<sup>9</sup> Today we see much the same sort of thing occurring in the wake of Donald Trump's ascendancy to

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<sup>9</sup> Breivik's 1518 page 'manifesto' has the title *2083 – A European Declaration of Independence* in which he asserts 'the fear of Islam is all but irrational' and claims to address topics 'related to historical events and aspects of past and current Islamic Imperialism'. The manifesto, a compilation from multiple sources, has been available as a pdf download via a Google search.

the US Presidency, and the lurch to the right that seems to be taking place elsewhere, including Europe.

A key question to ponder is whether counter-radicalization and counter-terrorism techniques and processes, presently targeting Muslim communities, need also to be applied to the ideological host communities whence arise Christian (and other religious) forms of reactive co-radicalization. Ironically, in the case of modern western societies, it is the very secularity of a secular society that allows for religious diversity in the first place. Yet today the utopian vision of a secular society positively predisposed to religious diversity – that is, allowing freedom of religion to all – is under threat from both religious extremism *and* the reactionary forces that may be either religious or non-religious.

The point is rather well-made by philosopher Martha Nussbaum. With reference to the contemporary upsurge of reactionary intolerance she observes: ‘Our situation calls urgently for searching critical self-examination, as we try to uncover the roots of ugly fears and suspicions that currently disfigure all Western societies’.<sup>10</sup> Nussbaum notes of the burqa and niqab bans implemented in France, Belgium and Italy that the numbers of actual wearers involved is a tiny minority. As with the Swiss minaret ban, such rejections of a couture are more symbolic than real. And there is a further irony: high fashion may even mimic, parallel or otherwise replicate the veiled couture of the rejected Muslims. And while the Burkini may be objected to in some parts of the world, in other areas – especially where there is concern for the effect of too much exposure to damaging sun rays – the couture of female swimwear covering the greater part of the body is on the increase.

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<sup>10</sup> Martha C. Nussbaum, *The New Religious Intolerance: Overcoming the Politics of Fear in an Anxious Age* (Cambridge, MA: The Belknap Press, 2012), 2.

What we are faced with today in the so-called secular West is increasing evidence of extreme right-wing and quasi-Christian religio-political rhetoric abjuring Islam and Muslims that is drifting ever more steadily toward the centre. Former marginal views are becoming increasingly mainstream. The centre is becoming ever more radicalized. Extremist denouncements and calls advocating and justifying exclusionary or eliminative actions against the threatening 'other' of Islam are increasingly tolerated. Certainly, they are rarely challenged. They are becoming normalized. Fear of the 'other', of difference and diversity, is the root problem. It lies at the heart of reactionary extremism.

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# The Discourse of Islam in France

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**Abstract:** *This paper examines the current discourse on the place of Islam and Muslims in France. It examines the pluralist, the exclusionist and the nationalist approaches to Muslim immigration. The aim is to identify the dominant discourse on immigration among French elites and its security policy implications.*

### Introduction

The question of whether Muslim immigrants can ever integrate in French society has been debated for long time in France.<sup>1</sup> The series of recent armed attacks by Islamist militants in the country has intensified this discussion. These violent events contributed to the portraying of Muslims as posing a threat to France. One element of this threat is characterized as cultural and the other as security. The question has been raised as to whether Muslim immigrants and their descendants will assimilate into a common French culture. Interestingly, according to Pew Research Center, the largest Muslim community in Western Europe exists in France and in term of absolute number, Muslims in France are estimated at 4.7 million in 2010.<sup>2</sup> More importantly, Muslim numbers are expected to continue growing in the country over the next few decades. As such, how to prevent Islamist inspired violence by home grown Muslim militants has taken centre stage in the debate on national security strategies. Accordingly, three major discourses have emerged as to the place of Islam and Muslims in France, and by extension, to the other Western societies: The pluralist; the exclusionist; and the nationalist.<sup>3</sup>

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<sup>1</sup> Paul May “French cultural wars: public discourses on multiculturalism in France (1995–2013).” *Journal of Ethnic and Migration Studies*, 2015. DOI: 10.1080/1369183X.2015.1093412

<sup>2</sup> Pew Research Center Report. 2011. “The future of the global Muslim population. Projections for 2010-2030.”

<sup>3</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

The liberal *pluralist* discourse promotes diversity of values, beliefs and identities. This discourse is strongly committed to respect, rights, participation and responsibility of all members the society. The discourse promotes an idea of society based on solidarity and respect of ethnic/religious communities. Hence, this discourse implies the recognition and tolerance of religious diversity through the universal values of reason and tolerance which are found in liberal norms and values. It emphasizes the moral responsibility of the national polity to include other religious and ethnic traditions. Culture and history is given significant importance in the liberal discourse. The historical dimension of Europe is evoked through parallelism between past religious wars and the present Europe.<sup>4</sup> It argues that the present Europe represents tolerance, coexistence and reason, which underpin the democratic values of modern Europe. Overall, the liberal pluralist discourse is driven by an attempt to include Muslims and Islam in Europe, based on Europe's shared past and a collective present and future. At the same time, this discourse also expects Muslims to demonstrate their willingness to integration. Nevertheless, the pluralist discourse could also lead to a low 'tolerance' for those Islamic practices perceived as illiberal.<sup>5</sup>

The *exclusionist* discourse represents the other side of the spectrum. The exclusionist discourse assumes that Islam and Muslim culture are illiberal and based on a radical interpretation of religion.<sup>6</sup> They argue that Muslim social and political institutions are opposed to Western civilization and therefore Muslims are incapable of integration to European societies.<sup>7</sup> Islam is therefore considered an undesirable religion.<sup>8</sup> This

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<sup>4</sup> Marco Scalvini, "A crisis of religious diversity: debating integration in post-immigration Europe", *Discourse and Communication*, Vol.10, No. 6, (2016).

<sup>5</sup> Ruth Wodak, et al. *The Discursive Construction of National Identity*, Edinburgh University Press, 2009.

<sup>6</sup> François Fillon, *Vaincre le totalitarisme islamique* (Paris : Albin Michel, 2016).

<sup>7</sup> Claire L. Adida, David D. Laitin and Marie-Anne Valfort, "One Muslim is Enough!? Evidence from a Field Experiment in France", *Annals of Economics and Statistics*, No. 121-122, 2016.

<sup>8</sup> Chris Allen, *Islamophobia* (Farnham, Surrey: Ashgate, 2010).

discourse can be distinguished by an ethnocentric vision and it is in opposition to the pluralist discourse outlined above.<sup>9</sup>

The *nationalist* discourse falls between these two rather opposed views. The nationalist discourse points to the national identity stressing, unity, continuity, history and the nation. This discourse asserts that co-existence with Islam is possible and negotiable, so long as a communitarian identity does not prevail. In this discourse, culture and history is also heavily present. The concepts of history, nation, unity, provide the main assumptions about the national culture, arguing for continuity of the traditions and heritage of the nation. Hence, this discourse requires Muslims to assimilate to the cultural and political characteristics of the national identity to preserve its 'continuity' and 'unity'.<sup>10</sup> In France, this national aspect seems to be highly interconnected with established discourse on the place of Islam and Muslims in the French nation. In France any forms of communitarianism based on ethnic, linguistic or religious identities are contrasted by Republican and Secular discourses.<sup>11</sup>

### **Laïcité and Identity**

The debate on Islam and Muslims in France is often framed around the concept of *laïcité* (secularism) which underpin French national identity. The argument is that the principle of *laïcité* in France is meant to assure that religious belonging has no role in forging social cohesion. The origin of France's *laïcité* dates to the Declaration of Rights of Man and the Citizens in 1789 where Article 10 established that: "No one shall be persecuted for his beliefs, even religious, provided that their manifestation does not disturb the

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<sup>9</sup> Will Kymlicka, *Multicultural Citizenship*.

<sup>10</sup> Waters, Lillian, "French or Muslim? "Rooted" French Perceptions of the Muslim Community in France" (2016). *Undergraduate Honors Theses*. Paper 1199.

<sup>11</sup> Jeremy Jennings, "Citizenship, republicanism and multiculturalism in contemporary France", *British Journal of Political Science*, Vol. 30, No. 4. (Oct., 2000), pp. 575-597.



public order established by the law.”<sup>12</sup> However, the current French legal document upholding the principle of laïcité is the 1905 Separation of the Churches and State law. This law declared that religion is a private affair, therefore prohibiting the French government from recognizing, providing a salary for, or subsidizing any religion.<sup>13</sup>

Subsequently, the 1946 Constitution made laïcité more explicit in French law by stating in Article 5 that: “No person may suffer prejudice in his work or employment by virtue of his origins, opinions or beliefs.”<sup>14</sup> Similarly, Article 13 states that: “The Nation guarantees equal access for children and adults to [...sic..] the provision of free, public and secular education at all levels.”<sup>15</sup> Finally, the principle of laïcité was strengthened by the current French constitution of 1958 which declared in Article 1 of the Preamble that: “France is an indivisible, secular, democratic and social. It ensures equality before the law for all citizens without distinction of origin, race or religion. It shall respect all beliefs.”<sup>16</sup>

In addition to the above legal framework, Laïcité has also a significant role in French history, governance, and intellectual thought. For the French revolutionaries, secularism represented the freedom of conscience for which they were fighting. Similarly, prominent French philosophers such as Montesquieu, Voltaire, and d’Holbach believed that the free man could not accept being dominated by a religion that imposes itself on him. Against this background, Laïcité in France is meant to symbolize a “revolutionary” solution to a

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<sup>12</sup> Declaration on the Rights of Man and the Citizen, Article 10, 1789, <http://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>.

<sup>13</sup> Blandine Chelini-Pont, “Is Laïcité The Civil Religion of France?” *The George Washington International Law Review* 41, no. 4 (2010): 782; Michel Troper, “French Secularism, or Laïcité,” *Cardozo Law Review* 21, no. 2 (1999): 1276.

<sup>14</sup> Constitution of The Fourth French Republic, Preamble, Article 5, 1946, <http://www.conseilconstitutionnel.fr/conseil-constitutionnel/english/constitution/preamble-to-the-constitution-of-27october-1946.105306.html>

<sup>15</sup> Constitution of The Fourth French Republic, Preamble, Article 16, 1946.

<sup>16</sup> Constitution of The Fifth Republic, Preamble, Article 1, 1958, <http://www.conseilgeneral.com/en/national/french-constitutional-council/constitutions/fifteenth-frenchconstitution.htm#Preamble>

long history of religious conflict that finally ended in the strict separation of church and state and guaranteed the avoidance of future religious violence.

### **The Security discourses**

In the above-mentioned context of Laïcité and identity, the discourse of how France should engage with the possible threats posed by home grown Muslim militancy has taken the nationalist approach. Looking at the diversity of ethnic and cultural background of the Muslim migrant population in France, it is apparent that there is no one “French Muslim identity.” Yet French elites often speak as if there were one, and they depict this fictitious identity as a threat to the nation. More recently, French elites often talk about “national identity problems,” and make demands for various changes in Muslims’ behaviour to remedy the situation.<sup>17</sup> For example, during a debate about France’s national identity, a member of parliament infamously “urged Muslims to look and sound more French.”<sup>18</sup> Accordingly, the nationalist discourse depicts France’s national identity threatened, and that Muslims are the ones threatening it, therefore the solution is for Muslims to act more French.

Consequently, the security discourse emphasizes the role of the security apparatus of the state in facing the threats of Islamic militancy, declaring all-out war on what is termed as “Islamic totalitarianism.”<sup>19</sup> However, the description of what is meant by the term is so vague that almost all aspect of the devoted Muslim individual’s religious activities can be included in it. Therefore, every observing Muslim can find themselves included in this definition.<sup>20</sup> Similarly, the discourse of call for aggressive legislative actions designed to ban Islamic symbols in public places in France, and the expansion of the role of the

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<sup>17</sup> Paul May, “French cultural wars”.

<sup>18</sup> Assemblywoman Nadine Morano, who served as a member of the National Assembly and as a minister in President Sarkozy.

<sup>19</sup> François Fillon, *Vaincre le totalitarisme islamique* (Paris : Albin Michel, 2016), p.45.

<sup>20</sup> Ibid., p.45.

security forces. For example, the laws banning prayer in the street, primarily affect Muslims because of a shortage of Islamic prayer rooms and mosques in France, notwithstanding the fact that the law do not single out Muslims in its text. Some writers warn that France is “in a war against an enemy who does not know the word weakness nor truce”.<sup>21</sup> Hence, the state needs to reclaim what described as *les terretaires perdus de la République* or “the lost territory of the Republic.”<sup>22</sup> By that they mean the areas of life in French society that are particular to the Muslim community such as places of worship and ‘Halal’ food markets places arguing that such places constitute fertile ground for Islamic militancy activities in France.

This narrow perspective on Islam led to portrayal of recent terrorist attacks on France as an external phenomenon coming to France from outside. The blame is assigned to non-French factors, mainly to foreign extremist organisations, Islamist ideologues and overseas training.<sup>23</sup> No reasons for the violence are sought inside the country except assigning blame to local preachers. Internal developments, such as discrimination, youth marginalisation, lack of educational and work opportunities, relations between law enforcement and the Muslim community that could potentially contribute to the acts, are not explored by the nationalist discourse. This narrow interpretation of ‘terrorism’ that assigns responsibility to Muslims, Islamic indoctrination and overseas training may further alienate Muslim communities in France’s already divided society. France’s focus of the nationalist discourse has led to narrow policy responses that focus mainly on stricter monitoring of Muslim minorities and limiting cross-border movement. This type of discourse excludes long-term policy solutions that address broader socio-politico-economic conditions that might nourish terrorism.

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<sup>21</sup> Ibid., p. 9.

<sup>22</sup> Ibid., p.95.

<sup>23</sup> Ibid., p. 45.

## **Conclusion**

This paper examined the dominant discourse on the place of Islam and Muslims in France. The main finding is that the assimilative emphasis in the nationalist discourse on Muslim immigration has been the dominant perspective in France. The dominance of this approach, which stresses differences, led to the perception of immigrant from Islamic background as a threat to the dominant values, norms, and beliefs of the society. Henceforth, the debate on identity and integration has been securitized thereby leading to the exclusion of non-security measures that address economic, political and social conditions upon which Islamic militancy might flourish.

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# Islamic Camps of Mysticism and Ethico-Rationalism and the Question of Violence

## Mortaza Shams

Mortaza<sup>1</sup> holds a PhD in Studies in Religion from University of Waikato and currently is a researcher at the Centre for Social Justice of Anglican Action and also a co-founder and Research Member of the University of Waikato Islamic Studies Group.

*Abstract: Unlike the popular perception, Islam is not a single monolithic entity. There are fundamentally different understandings of Islam among Muslims. This diversity in understanding does not stay limited to the intellectual arena and extends to practical realms as well. That being the case, not all understandings of Islam lead to certain outward manifestations. This is especially the case with regard to violence perpetrated against innocent people around the world.*

### Introduction

Recent years have been marked by unprecedented violence waged in the name of jihad by Muslim extremists. The rise of self-proclaimed Daesh Caliphate in Syria and Iraq gave this wave of violent extremism a significant boost. Although the Daesh Caliphate has been swept from almost all the main populated areas in the region, the question that remains is whether Islam, as the religion that many of Daesh atrocities were undertaken on behalf of, is the real force behind this wave of violence or not. Is the source of violent extremism an interpretation of Islam that has taken advantage of the failed states and crippling corruption in the Middle East? Or is the issue the very essence of Islam which would need to be addressed? If it is Islam, as a religion, that is responsible for the status quo, then there is little hope

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left for the region and its people as Islam has thrived in the region for centuries with no sign of fading away. Islam is entrenched as a part of the lives of those people who see this religion as their identity and as long as they live, Islam lives with and within them.

Although a quite insignificant number of radical commentators might have suggested that all Muslims should be killed<sup>2</sup>, no serious strategist sees this as a realistic option. That being the case, even the most staunch Islamophobes need to learn to live with this reality and accept that Islam is going to play a substantial role in the foreseen future. However, instead of expecting the sudden disappearance of Muslims from the globe, there is a different way to look at the issue. This new way starts with the question: what do we mean by “Islam” and where is the problem of violence is rooted?

### **Islam or Islams?**

Despite the notion that Islam forms a single monolithic entity, the rich diversity of religious beliefs and Muslim cultures proves such a notion more a simplistic myth than a pervasive fact. The level of diversity among Muslims is to such a degree that some scholars have come to the conclusion that there are as many “Islams” as there are “Muslims”.<sup>3</sup> Then it is needless to emphasize that under the normative banner of ‘sameness’ seen as a monolithic Islam there are a wide range of variegated identities.

In addition to the popular categorization of Muslims based on their religious legal schools or *madhhabs*, there are more precise ways to explain fundamental differences among Muslims. This is not to deny importance of *madhhabs* in the day

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<sup>2</sup> “Can we not kill them all?”. In The Guardian, February 23 2017. Accessible via: <https://www.theguardian.com/us-news/2017/feb/23/north-carolina-islamophobia-muslims-threats>

<sup>3</sup> William E. Shepard, *Introducing Islam*, Routledge, 2014, p. 3.



to day lives of Muslims in any way. Although many Muslims simply consider themselves as ‘Muslim’, and do not give their *madhhab* affiliation the same importance that they give to their religion, the fact is that many Muslims are aware of their *madhhab* and this awareness is increasing. Today there are five main Islamic *madhhabs* that most Muslims, knowingly or unknowingly, follow. These *madhhabs* are Maliki, Hanafi, Shafi`ei, Hanbali, and Jafari (Shia). There is no doubt that *madhhabs* play an important role in deciding the way that a Muslim performs his or her religious practices. However, the fact is that many ordinary Muslims only suffice to performing a small portion of fiqh as the manifest of each *madhhab*. This small portion which is called ‘minimal fiqh’ only constitutes the pillars of the religion or *arkan* which are the four worship acts of canonical prayers, fasting, pilgrimage, and almsgiving in addition to declaration of faith or *shahada*. Many Muslims do not follow the whole range of jurisprudential rulings of *madhhabs* and many Muslims – including some Sufis and followers of some sects – do not follow any *madhhab* at all. Thus, categorizing all Muslims based on *madhhabs* is not inclusive and explanatory enough. This means that the popular ‘Sunni’ versus ‘Shia’ division which is also, mostly, based on jurisprudential distinctions cannot be helpful for explaining deeper differences either.

A more encompassing categorization of Muslims is rooted in the living history of Muslims. A categorization that not only covers the old differences among Muslims but also can explain the recent challenges and developments in a more consistent way. According to history the Islamic society after the decease of the Prophet of Islam faced three major crises:

- 1- The crisis of too much worldliness and lack of spirituality.
- 2- The crisis of faith regarding ‘who is a true Muslim’, resulted from divisions within the *umma* known as *fitna* based on mutual accusations of impurity.

3- The crisis of social identity resulted from losing majority to non-Arab converts and also non-Muslim inhabitants of the newly opened lands after mass conquests in three continents of Africa, Asia, and Europe.

In response to these three crises the Islamic faith demonstrated three responses: mystical, rationalistic, and jurisprudential capacities. The three mega-movements of Sufism, Islamic rationalism or *kalami* movement, and jurisprudential movement, not only brought up three main qualities of Islam but also permanently divided believers accordingly. Each camp developed its own religious knowledge which are: *Irfan*, *kalam*, and *fiqh*. The result was the formation of three essentially different understandings of Islam famous as Irfani Islam, Kalami Islam, and Fiqhi Islam.<sup>4</sup> The difference between these three camps are so deep that Mohsen Mojtahed Shabestari sees religiosity of followers of mysticism (*Irfan*) as substantially different from followers of *kalam* and *fiqh* and vice versa.<sup>5</sup>

This categorization has been accepted and followed by many Muslim scholars across different *madhhabs* up to today. This means that this categorization has kept its relevance to the current era and contemporary developments, in addition to its capacity for explaining previous situations. For example, this categorization is quite popular among Iranian Muslim thinkers, with the Persian translation of these being: *islam-e tajrobat-andish* for mystical Islam, *islam-e marafat-andish* for kalami or theological Islam, and *islam-e Shariat-andish* for jurisprudential, or fiqh-minded, Islam. The claim of this paper is that combatting the current wave of violence based on capacities of different camps of Islam can bring a much more favorable result than portraying all Muslims as a potential enemy.

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<sup>4</sup> Mohsen Kadivar, *Hokomat-e Wilaei*, Nashr Nei, 1380/2001, p. 18.

<sup>5</sup> Mohsen Mojtahed Shabestari, "Piramoun-e islam va democracy (about Islam and democracy)." Accessible via: <http://www.rahesabz.net/story/57596/>

## **Knowing the enemy**

To combat violence, including terrorism, we need to know where this phenomenon, both ideologically and materially, is rooted in and feeds from. There is no doubt that any miscalculation about the nature and roots of the current terrorism of the Muslim extremists not only leaves any counter-terror attempt fruitless, but it also (by aiming at the wrong targets) may create new challenges and threats. To combat the current wave of terrorism the anti-terror camp needs to demolish the social base of terrorism and for that they need the strong cooperation of mainstream Muslims. To gain the mainstream's support, the anti-terrorist camp should communicate to the mainstream in its own cultural language and erase its concerns regarding alternative socio-political agendas. It is a fact that the extremists will continue to constantly monitor their opponents' actions, inactions and approaches, and will try to find an excuse to fuel the suspicion of this mainstream towards the intentions of the anti-terror camp. The long history of colonialism/imperialism (colonialism as practice and imperialism as the idea driving the practice) makes the job of the extremists in fueling such suspicion even easier.

Losing the trust of the mainstream populace is of course the last thing that the anti-terror camp needs. To win a battle against an enemy such as terrorism, first and foremost there is a need for winning the hearts and minds of its social base. For that purpose, a clear distinction between the different divisions of that society is axiomatic. Such a distinction is essential both for selecting a proper language of communications and choosing the right strategy to avoid targeting incorrect suspects. These two are vital for building trust with the mainstream. To gain such distinction it takes a precise understanding of the nature of the issue – in this case the violence executed in the name of the religion of Islam – and the actors and factors behind it.

Issues related to representation is another practical realm where a proper understanding of the internal divisions among Muslims can help to avoid miscalculations and escaping costly policies based on wrong assumptions. As Pratt argues “true representation” has always been a major issue in Islam as it has been the case with its sister religions of Christianity and Judaism.<sup>6</sup> Usually believers see their own understanding of the religion as the authentic and correct one. Muslims are no exception in this regard. In today’s Islamic world different perspectives are competing to gain legitimacy and leadership to guide the direction of the international Muslim community.<sup>7</sup> Sufi movements see their version of Islam as the cure for the lustful and violent environment destroying human qualities and are seeking to revive their *tariqas*. Rationalist reform movements seek to purify the faith from customs of pre-modern societies and match it with the current conditions and needs of human society. Finally, legalists are seeking to establish the Islamic state based on a highly idealised abstract conceptualisation of the *Sharia*. Needless to say, that each movement sees itself as the true Islam and invites people to its way. We need to be aware of the nature of these movements and their internal clashes to avoid painting all Muslim activists with the same brush and treat them accordingly which, in certain circumstances, can have quite problematic consequences. If, as the mainstream media is eager to portray, major developments within the Islamic world are seen as anti-Western there will be limited optimism regarding the success of any joint combat against violent extremism. On the other hand, if these developments are seen (as they truly are) as an internal competition over supremacy and representation among different camps of Islam, then the outcome can be substantially different.

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<sup>6</sup> Pratt, *The Challenge of Islam*, Ashgate, 2005, p. 3.

<sup>7</sup> Muqtadar Khan, *Washington Report on Middle East Affairs*. April 2001, Vol. 20 Issue 3, p. 82.

Failing to understand the underpinning ideologies and worldviews that shape the current developments in the Muslim world and prescribing militaristic solutions for any undesirable development has brought bitter fruits. Waging military attacks against Muslim countries and societies might easily lead to a further marginalization of the fundamental internal controversies among Muslims in favour of confronting the shared, common foreign threat. An outside threat has the potential to unite unlike-minded Muslims and force them to disregard their essential differences. Such a prioritization of resistance to a foreign invasion is obviously to the benefit of the hardliners who have the advantage in the use of violence as this may give them the upper hand and the louder voice. As a costly example, while many Muslim activists were fundamentally at odds with the former Iraqi dictator Saddam Hussein, the 2003 invasion of Iraq changed the political landscape of the region and redefined coalitions and partnerships around the new situation. There is no reason this may not happen again. Foreign invasion drew those people and social groups formerly fiercely opposed to each other, in terms of cooperation and coexistence, close together. Many of those who joined the ranks of the insurgency after the fall of Saddam Hussein in Iraq were actually prisoners of his regime.

When approaching the social divisions of Muslims, we also need to be careful about misreading similarities and differences. There is, for example, one major confusion resulting from the commonality of a minimal level of spirituality, jurisprudence and creedal beliefs among all three Islamic camps of Jurisprudentialism, Mysticism and Rationalism which has created the impression that all three are the same with superficial differences. That is not the case in any way. For example, while all three camps agree on the existence of spiritual elements embedded in the prescribed rites or *manasik*, the other two camps other

than mysticism do not see Islam as only a vehicle for spiritualism without strong outward dimension to it. Again, while all three camps follow the minimal outward rites, except for the jurisprudential camp, the other two do not see Islam as a set of rulings and commands. The same applies to the creedal rational discussions. The rationalist camp sees religion a mere continuation of human reason. In the rationalists' view, and as the great Mutazili thinker, al-Jahiz, notes, revelation is not but a new tool without any superiority over reason.<sup>8</sup> The other camps of mysticism and Jurisprudentialism do not agree with rationalist in this regard and do not allocate the same high position for reason. The other two camps either reject reason completely, as mysticism does, or limit it to merely a tool for discovering rulings of the religion as jurisprudential camp does.<sup>9</sup>

As a practical result of misreading the similarities among Muslims of different camps, for example, some might consider any practicing Muslim inherently an extremist and the only tolerable Muslims for them are the “nominal Muslims” who do not have sincere belief in their religion.<sup>10</sup> As a matter of fact, in many cases some non-practicing Muslims support violence in a much stronger way than practicing Muslims, maybe, because they care less for limitations laid down by religion.<sup>11</sup>

Owing to conflicting information about the internal differences and divisions among Muslims, these days it is not unusual to face quite contradictory comments about Islam. While some call Islam a religion of peace and therefore an essential part of the solution for human problems, others see it as a part of the problem whose

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<sup>8</sup> Caesar E. Farah, *Islam*, Barron's, 2003, p. 210.

<sup>9</sup> Joseph Schacht, *An introduction to Islamic law*, Oxford University press, NY, 1982, Preface, pp. 34-35.

<sup>10</sup> Sam Harris vs Fareed Zakaria on Islam - Are most Muslims extremists?, accessible via: <https://www.youtube.com/watch?v=BCM2rU7mFKk>

<sup>11</sup> <http://www.newstatesman.com/religion/2010/02/muslim-religious-moderation>.

time has long passed and has nothing for humanity and perceive the faith as “the motherlode of bad ideas”.<sup>12</sup> In this work I have tried to provide a first hand and at the same time less common image of Islam and how Muslims themselves see the issue. This image can not only help with explaining the past and present developments of Islam but can also help with demarcating solutions for current problems related to this religion – including the issue of violence waged in the name of jihad.

### **Islamic mysticism and violence**

Mystical Islam is based on the spiritual journey from the disparities of the material world to the unity of spiritual truth. The destination and final stage of this journey is called *wasl* or ‘re-joining’. The notion of ‘re-joining’ is rooted in the concept of *vahdat-e vojood* (وحدت وجود), which advances the concept of a unity of existence removing all separations and manmade zones of exclusion that appear to have hitherto been a condition of human communities. If all humans are viewed and treated as one essentially, philosophically, and ontologically, the pain and problems of one become the pain and the problems of all.<sup>13</sup> The Iranian poet and thinker, Saadi of Shiraz, expresses this notion eloquently:<sup>14</sup>

*Human beings are members of a whole,  
In creation of one essence and soul.  
If one member is afflicted with pain,*

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<sup>12</sup> Real Time with Bill Maher: Ben Affleck, Sam Harris and Bill Maher Debate Radical Islam (HBO), accessible via: <https://www.youtube.com/watch?v=vln9D81eO60>

<sup>13</sup> S. M. Farid Mirbagheri, *War and peace in Islam*, Palgrave, 2012, pp. 55-56.

<sup>14</sup> Saadi, Golestan.

بنی آدم اعضای یک پیکرند  
که در آفرینش ز یک گوهرند  
چو عضوی به درد آورد روزگار  
دگر عضوها را نماند قرار  
تو کز محنت دیگران بی غمی  
نشاید که نامت نهند آدمی  
سعدی، گلستان

*Other members uneasy will remain.  
If you have no sympathy for human pain,  
The name of human you cannot retain.*<sup>15</sup>

Since most of conflicts are over material gain, rejection of materialism by mysticism is another principle which can contain conflicts and violence. *Faqir* (فقير) and *darvish* (درويش), which both means ‘the poor’ pointing to some Quranic verses announcing anyone but God as poor, is what Islamic mystics including Sufis call themselves. Although such titles point to spiritual aspects of human entity still indicate a clear detachment from temporality and worldliness more than anything else. By rejecting egocentricism and selfishness then the source for disputes and clashes will disappear, Sufis claim.<sup>16</sup>

Promotion of unconditional love is another aspect of mysticism which opposes violence. Since wars start in the minds of humans then if the minds do not give way to anything but encompassing peace/love at all levels, there will be no soldiers for power-thirsty warlords.<sup>17</sup> Such an encompassing peace does not recognize such a thing as ‘others’ which is the main root of disputes at the first level and conflict at the final stage. For Sufism humans are facing a greater issue which is finding their way in re-joining their spirit to its origin and escaping the darkness which is detaining the essence of humanity which is light. Humankind is prisoner in the hands of his own self-desires and self-aversions which constructs a loveless and uncaring world.<sup>18</sup> Such worldliness has been quoted by Jesus to be like “*drinking sea water which makes the thirsty thirstier*”.<sup>19</sup> Fighting over worldly desires which redirect humans’ attention from their main goals has no place in mysticism. The battle for

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<sup>15</sup> Quoted in S. M. Farid Mirbagheri, *War and peace in Islam*, Palgrave, 2012, p. 56.

<sup>16</sup> Mirbagheri, *War and peace in Islam*, pp. 55-6.

<sup>17</sup> Ibid, p. 42.

<sup>18</sup> Ibid.

<sup>19</sup> Quoted in, Mirbagheri, *War and peace in Islam*, p. 45.



mystics is inside the human being rather than outside.<sup>20</sup> It is how Mirbagheri describes Islamic Gnosticism when quoting the following passage from Rumi's book of *Masnavi Manavi*:<sup>21</sup>

*Oh honorable ones, we have slain the external foe,  
A more forbidding enemy lurks down below;  
Dislodging it, intellect and intelligence would not dare,  
The inner lion is not the plaything of a hare;  
It is a common lion that breaks the legion's rows'  
The true lion is he/she who breaks the inner foe.*<sup>22</sup>

If the interests of others are placed before one's self interest, as Islamic mysticism preaches, then there will be no reason for a conflict of interests which is the root-cause of clashes among humans. The egoistic trait of individuals is recognized by mysticism as the source of disputes and the only way to contain it is to replace it with the real needs of human beings which is realizing his potential of being the theophany of the Divine Attributes (which every human has the capability to achieve). This is because humanity has been appointed as the vice-regent of God on the earth and is a comprehensive theophany of all Divine Names and qualities, and thus has been created in the universal Divine form. Every human, according to mystic discourse, reflects God and His glory in every aspect.<sup>23</sup> Whatever problem is caused by a human being, including unjust violence, is because of suspension of the Divine qualities which have been embedded in the essence of humans. With

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<sup>20</sup> Arthur Buehler, *op cit*.

<sup>21</sup> It seems that the following poem of Rumi is pointing to a tradition of the Prophet which puts "lesser jihad" against the "greater jihad" which is purification from self-desires:

اي شهان كشتيم ما خصم برون  
ماند خصمي زو بدتر در اندرون  
كشتن اين كار عقل و هوش نيست

شير باطن سخره خرگوش نيست  
سهل دان شيري كه صفها بشنكند  
شير آن باشد كه خود را بشنكند

<sup>22</sup> Mirbagheri, *War and peace in Islam*, p. 42.

<sup>23</sup> *Ibid*, pp. 43-44.

regard to the concept of jihad in Islamic mysticism, jihad is not but merely ‘the war against the ego’ or *jihad al-nafs* pointing to a prophetic tradition.<sup>24</sup>

### **Islamic Ethico-Rationalism and the question of violence**

When religion has become a source of dispute and conflict these days the ethical approach toward religion is believed to be able to stop believers from fighting others over religious differences or self-interests. Islamic Ethico-Rationalism or Theo-ethicalism, as the ethical approach toward religion, has many of its tenets in common with Mutazilism. The Mutazili notion of ‘position between positions’ can be understood as moderation in all aspects including in times of conflict. It means balanced attention paid to one’s rights over, and one’s obligations towards, others, with respect to the material world and the spiritual world. It also means a balance between forgiveness and resistance, between prodigality and niggardliness, and a resolute aversion to extremism and terrorism in all their manifestations.<sup>25</sup> Moderation, as balanced temperament and easiness (*wasatiyyah, itidal* and *samhah*) is inherent to peace if it is not peace itself.<sup>26</sup>

In theo-ethical approach toward Islam or Islamic ethico-rationalism, jihad is about living morally which is striving in the way of God by doing good and avoiding evil. Accordingly, life itself is a constant jihad between the believer’s passionate soul and the demand of the immoral desires within him. Therefore, for ethico-rationalism, jihad is vigilance against all that distracts human beings from God and their exertion to do His Will within themselves as well as preserving the order and harmony that he has willed for them.<sup>27</sup> Therefore jihad for Islamic ethico-rationalism is a God-

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<sup>24</sup> Abu Bakr Siraj ed-Din, ‘The nature and origin of Sufism’. In *Islamic Spirituality*, edited by Seyyed Hossein Nasr, Crossroad, 1987, p. 228.

<sup>25</sup> Hashim Kamali, *Shari‘ah Law*, Oneworld Publications 2008, p. 294.

<sup>26</sup> Wahbah al-Zuhaili, quoted in *Shari‘ah Law: an Introduction*, Mohammad Hashim Kamali, Oneworld Publications 2008, p. 294.

<sup>27</sup>, Seyyed Hossein Nasr, *Islam; religion, history, and civilization*, HarperCollins, 2003, pp. 96-7.

oriented life<sup>28</sup> and is against an idol-oriented life. Among those idols which can replace God as centre of focus can be power, wealth, ego, and of course ideology. These are often the main sources of disputes and conflicts and with controlling them the source of conflict will dry up, according to ethico-rationalism. By promoting morality, ethico-rationalism can act as a preventer of violence. At the social level the ideal order and harmony can be gained through a moral order which promotes a collective spirit of unity in a way that its product could be a society where its members are effectively brothers and sisters. Such a moral society will lack many of elements which provoke violence. Religion for ethico-rationalism is in the service of human beings and not the other way around. As such, bringing peace and prosperity to humanity is (or should be) the ultimate goal of religion. Accordingly, and as the Iranian thinker Ali Shariati has commented, “a religion’s success is dependent on the success of its adherents.”<sup>29</sup> If a religion brings peace among people it is a successful one and vice versa.

Due to the centrality of the concept of ‘justice’ and also the role of ‘reason’ in ethico-rationalism, from the theo-ethical point of view any kind of violence and use of force including war must be based on being ‘just’. Like justice itself, ‘just use of force’ is also decided by the human common sense. Regarding the question of ‘jihad’ and its relation to violence from a theo-ethical perspective, it could be said that, the same rule of ‘just use of force’ applies when it comes to military jihad. As such the use of force for just causes is not necessarily of a religious nature whether it be called jihad or anything else but should meet the criteria for ‘moral and just use of force’. Thus

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<sup>28</sup> Say, “Indeed, my prayer, my rites of sacrifice, my living and my dying are for Allah, Lord of the worlds”. (Q.6:162)

(قُلْ إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ) (انعام/162)

<sup>29</sup> پیشرفت هر مذهبی بستگی به پیشرفت پیروان آن مذهب دارد.

علی شریعتی، عرفان، برابری، آزادی، حسینیه ارشاد، 1357، ص 2.

Accessible via: <http://www.negarstan.com/free-download/e-book/1057>

jihad, in its militaristic form, might be supported because of its service to the good and rejected otherwise by ethico-rationalists. As such, for ethico-rationalism, in the case of armed conflict, if 'jihad' stands for 'just war' then it is accepted and if not then it is rejected. This is unlike jurisprudential camp which looks at who is involved in the conflict rather than what the cause of conflict is. According to Islamic jurisprudence or *fiqh*, in an armed conflict in the name of jihad, the Muslim side is right and the other side is wrong and it does not change even if the Muslim side is the invader and the non-Muslim side is defending itself.

### **Conclusion**

Not all understandings of Islam lead to certain outward manifestations, especially what is seen of the horrible violence committed against innocent people around the world. Islamic mysticism, as one of three main understandings of Islam, rejects violence unconditionally. In that light any act of violence by Muslim extremists is first and foremost in contradiction with Sufi teachings and as such Islamic mysticism is a natural ally for anti-violence initiatives.

While Islamic ethico-rationalism, unlike mysticism, does not reject the use of force altogether, it limits the use of force through its moral principles including justice and rejects violence as unjust use of force. With the current violence, before anything else, being unjust, the Islamic ethico-rationalism is also a reliable partner in the struggle against violence.

Although the limitation of this publication does not allow discussing the position of Islamic jurisprudentialism (which has a more complicated stand in this regard), if Muslims, as the Quran advocates, believe that "peace is the principle"<sup>30</sup>, in

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<sup>30</sup> والصلح خير  
Quran, 4:128.

practice put peace at the center of their interactions with themselves and with others, their religion cannot be easily hijacked by extremists to promote violence. It is regardless of whether they belong to camps of mysticism and ethico-rationalism or not.

The main goal of this paper was to shed light on the issue of violence from different angles. Much is needed to be done by Muslim scholars to discredit a call for violence by radical Muslim extremists in the name of Islam, not only to help victims of such violence but to help Islam as the main victim of this degrading imputation.

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