# *Introduction*

## DISCOURSING ON REBELLION

One of the most important issues confronting Islamic law today is how to balance the obligation to obey God against the fact that God's will is represented by human beings. In Islamic thought, God is the authoritative source of law, but what is the balance between God's authoritativeness and the potential for human authoritarianism? From an institutional and social point of view, God's will could be represented by a variety of political or social realities including an absolute ruler, a court, a body of clergy, an ingrained bureaucracy, a well-established social practice, or even the unchallenged assertions of the head of a household. From a doctrinal and, perhaps, dogmatic perspective, God's will is represented primarily by the ruler and jurists who are considered God's special agents on the earth. While Muslims in general, arguably, are God's viceroys on this earth (*khulafā' fī al-arḍ*), it is rulers and jurists who traditionally have enjoyed the power to speak for the divine law. Doctrinally, both rulers and jurists, to different extents, are empowered to construct and represent the divine will in Islam.[1] This creates a dichotomy between the roles, interests, and aims of rulers and Muslim jurists. Inherent to this dichotomy is an implicit form of negotiation – a power sharing or, at times, competition.

The negotiative dynamic between rulers and jurists in Islamic history has produced a complex and rich doctrinal discourse which, at least as understood and constructed by the juristic culture, has been recorded in Islamic legal sources. An integral part of this negotiative discourse is the law of rebellion in Islam. This juristic discourse deals with the moral and legal position of those who rebel against the political authority of the state, and addresses the treatment that should be afforded to such rebels. Importantly, these juristic discourses carry considerable normative weight

[1] On this issue, see Abou El Fadl, *Speaking*.

in the contemporary age and, therefore, they may exercise a powerful prescriptive influence on how oppositions, rebellions, and, in fact, armed struggles of any sort are understood and treated in the modern Islamic world.

The purpose of this study is to examine the Islamic law of rebellion. This stated purpose, however, needs to be qualified in certain significant respects. Joseph Schacht has described Islamic law as a case of "jurists' law."[2] By this, Schacht meant that Islamic law has developed through a process of theoretical, juristic discourse. Without endorsing Schacht's views on the history or nature of Islamic law, this study will focus on the Islamic juristic discourses on rebellion rather than the Islamic or Muslim law of rebellion.[3] Conceptually, one should distinguish between juristic discourses, Islamic law, and Muslim law. In order for one to speak of the Islamic law, as opposed to the Muslim law or juristic law, of rebellion, one would need to point to a set of authoritative or canonical rules that apply to a specific behavior that is identified as rebellion. Essentially, one would need to point to a set of legal standards that define an act of rebellion, and thus indicate when the canonical rules would come into force. This study, however, goes beyond explicating the doctrinal rules that apply to the treatment of rebels. Muslim juristic discourses incorporate the rules of Islamic law, but also engage in a rhetorical dynamic through which the jurists adjudicate, advocate, protest, and aspire for certain goals.

An investigation into the Muslim law, as opposed to Islamic law, of rebellion would need to engage in several inquiries which are not the primary focus of this study. Such an investigation would need to focus on the positive legal enactments in various periods of Islamic history that identified an act of rebellion, and that responded to those accused

[2] Schacht, *Introduction*, 5. Schacht states: "Islamic law represents an extreme case of 'jurists' law'; it was created and developed by private specialists; legal science, and not the state, plays the part of a legislator, and scholarly handbooks have the force of law." Schacht, however, overstates his case. Several recent studies indicate that the role of the state in the development of Islamic law is far more complex than Schacht assumes: Jackson, *Islamic*, esp. 185–224; Fadel, "Adjudication," esp. 2–120; Melchert, *Formation*, esp. 200; Zaman, *Religion*.

[3] Relying on the fact that Islamic law developed through a process of juristic discourses, Schacht reaches the conclusion that Islamic law represents a unique phenomenon of legal science: Schacht, *Introduction*, 210. He further argues that Islamic law is perhaps not law at all, as if the concept of law did not exist in Islam: ibid., 200. I take serious issue with Schacht's conclusion that Islamic law is simply a juristic discourse, but not law. I also take issue with his contention that Islamic law is a unique phenomenon of legal science, but not a legal system. Besides being ahistorical, Schacht's view relies on a very limited and strict positivist definition of law. As Alan Watson and I demonstrate, a jurists' law is hardly a phenomenon unique to Islamic law. See Abou El Fadl and Watson, "Fox," esp. 28–9.

of such an act. It would also need to address the way in which the political and legal order actually dealt with those who chose to challenge or disobey its imposed system of order within specific historical contexts. Therefore, one would have to address the actual treatment of rebels and rebellion in different stages of Islamic history.[4] Furthermore, one would have to examine closely the process by which these legal practices were justified in terms of an Islamic frame of reference, and hence can be considered part of the Islamic legal heritage.[5] While this approach has obvious merits, it is rather limiting because it would have to be qualified by specific historical and social practices. Therefore, one would have to speak, for instance, of the Umayyad law of rebellion or the Ottoman law of rebellion. This study, however, focuses on the intellectual history of the law of rebellion as understood and constructed by the jurists. Muslim juristic discourses do selectively incorporate and creatively reconstruct the legal practices of society. Therefore, it is necessary to contextualize these discourses within certain historical events, and to examine these discourses in light of a historical continuum. Nevertheless, the issue of the actual legal practices on rebellion requires numerous other and more specific socio-historical studies.

The primary focus of this study will be the debates among Muslim jurists on the idea of rebellion, and on the way a rebel was understood, constructed, or deconstructed. We are not only interested in the various positive enactments or legal rules that Muslim jurists argued should apply to rebels, but also in the value or moral judgments that Muslim jurists passed on the act of rebelling. Hence, for example, we are not only interested in whether Muslim jurists thought a rebel should be executed, but also whether they thought that a rebel was committing a sinful act or, *a priori*, whether they thought that a crime was being committed at all. Fundamentally, we are interested in the dynamics of the juristic process, and more specifically, we are interested in the process by which Muslim jurists approached the doctrinal sources and selectively reconstructed the sources in response to political and social dynamics. We will focus on the way Muslim jurists negotiated law and power through the medium of language, and responded to their understanding of political and social demands through a variety of creative acts.

[4] To what extent one can consider historical or, for that matter, contemporary state practices to be "Islamic" is open to debate. Nevertheless, the Muslim legal system as represented by Muslim legal practices, and not just the juristic discourse, has been ignored for too long.

[5] Of course, regardless of the frame of reference, these practices may still be considered a part of the Muslim, as opposed to the Islamic, legal heritage.

In this context, we are using the word "rebellion" in its most general sense; it means the act of resisting or defying the authority of those in power. There is a broad array of acts that could qualify as acts of rebellion. On the one hand, rebellion could be an act of passive non-compliance with the orders of those in power, or on the other hand, it could be an act of armed insurrection. A rebellion could take the form of a counter-culture that seeks an alternative mode of social expression, or it could take the form of an assassination attempt against a famous religious or political figure. But beyond the issue of the means or form that a rebellion may take, there is also the issue of the target of a rebellion. A rebellion could be directed against a social or political institution. Alternatively, it could be directed against the religious authority of the *ʿulamāʾ* (the jurists) or the idea of God. Often it is extremely difficult to distinguish between one form of rebellion and another. For instance, it is not always possible to distinguish between heresy, treason, sedition, revolt, and an act of political opposition. Frequently, the line drawn between one and the other does not necessarily relate to the nature of the act, but rather is a matter of degree. The difference, for example, between an act of sedition and an act of treason will depend on the context and circumstances of such an act, and on the constructed normative values that guide the differentiation. Therefore, often the distinction created between one and the other is quite arbitrary in nature.

This study does not attempt to create a theoretical construct distinguishing one act from another, and then attempt to fit Islamic legal discourses within the framework of that theoretical construct. Rather, it attempts to understand and make sense of the legal categories and distinctions made by Muslim jurists, and then reach certain conclusions about the nature of these juristic discourses. I am interested not only in what these juristic discourses were trying to achieve politically and socially, but also in what they can tell us about the premodern Muslim juristic culture. For example, as discussed later, one of the often-reached conclusions about Muslim legal history is that Muslim jurists were realists and quietists. Muslim jurists, it is often argued, traded in an extreme form of political idealism for an equally extreme form of political pragmatism, and in doing so have advocated politically passive or quietist positions. This study will challenge these generalizations.

This study, however, does not simply aim to reach an ultimate judgment about the role of political pragmatism in Islamic juristic discourses. More importantly, it is interested in tracing the way language, historical events, and religious doctrines are co-opted, constructed, or channeled

to reach certain legal positions. For example, the word used by Muslim jurists to describe an act of rebellion is *baghy*. The word comes from the root word *baghā*, which in its various forms could mean: (1) to desire or seek something; (2) to fornicate or cause corruption; or (3) to envy or commit injustice.[6] The process by which this term was co-opted and used in Islamic juristic discourses is not only useful for understanding how rebels were perceived or understood, but it is also important for understanding the creative process by which Islamic law expresses a legal development. Put differently, the methodology used by Muslim jurists in constructing and arguing for an Islamic law of rebellion is extremely probative in understanding the process by which Islamic law changes and develops. In fact, the failure to pay careful attention to the linguistic practices, or the terminology and the specific methods by which Muslim jurists discoursed on Islamic law, I believe, is largely responsible for the view that Islamic law has remained static and unchanging since the fourth/tenth century.[7] In the area of the law of rebellion, Muslim juristic discourses continued to develop and change within the paradigm or framework constructed by Muslim jurists themselves for discoursing on the subject.

This study traces the development of Islamic legal discourses on rebellion by relying on original sources spanning from the second AH/eighth CE to the fourteenth/twentieth centuries. Nonetheless, its main focus is the development of the legal discourse from its incipient years to the eleventh/seventeenth centuries. I argue that the law of rebellion, as a systematic and coherent body of discourse, in all probability developed in the late second/eighth century and continued to be restated, rearticulated, and reconstructed within the same framework until the eleventh/seventeenth century. With the advent of the age of colonialism and modernity, the discourses on rebellion, but not necessarily the law of rebellion, were co-opted by Muslim activists and underwent major reconstructions. In the modern age, the classical juristic rules that deal with the treatment of rebels have been, to a large extent, ignored. Nonetheless, there has been a reconstructed debate on waging *jihād* against unjust rulers, but this matter deserves a separate study.[8] This study focuses on

[6] Ibn Manẓūr, *Lisān*, 1:321–3.

[7] Schacht and others have argued that Islamic law ceased to develop from the end of the third/ninth or the beginning of the fourth/tenth centuries: Schacht, *Introduction*, 70–1; Anderson, *Law*, 7; Coulson, *A History*, 81. This view has been ably challenged by the work of several scholars: Udovitch, *Partnership*; Johansen, *Islamic*; Hallaq, "Gate," Hallaq, "Model." See also Abou El Fadl, "Islamic"; Abou El Fadl, "Tax."

[8] For an excellent introduction to the topic of *jihād* against unjust or corrupt rulers, see Peters, *Islam*, esp. 39–165.

the juristic discourses on *aḥkām al-khawārij wa al-bughāh* (the law relating to rebels) and on *aḥkām al-ḥirāba* (the law relating to bandits and brigands).[9] The difference between brigands and rebels will be explored later. *Aḥkām al-ridda wa al-zandaqa* – the laws of apostasy and heresy, although they overlap in certain important respects with the law of rebellion, require a separate treatment.[10] Finally, although I have consulted the major sources in both Sunnī and non-Sunnī traditions, the main focus of this study will be on the Sunnī schools of thought.

In addition to being a work on intellectual history, this is a book of legal theory. I am interested in what I have called the linguistic practice of the juristic culture, the way that a juristic culture negotiates power primarily through the use of language, and the way a juristic culture talks to and about political power. As I emphasize in this book, linguistic technique is the primary means by which a juristic culture attempts to direct and negotiate power, and it does so through a series of creative and symbolic acts.

The plan for this book is as follows: First, I will go through the tedious, but necessary, process of surveying the largely inadequate scholarship produced to date on the issue of rebellion and Islamic law. As will become apparent, I propose an entirely different approach to this field of study. I will lay the foundations for this book by positioning it within a legal conceptual framework that I believe is necessary for understanding the juristic discourses in this field. In order to emphasize the creative and negotiative process by which these discourses developed, I will analyze in some detail the conflicting doctrinal foundations that have been co-opted and deployed in the discourses on rebellion. Next, I will analyze the development of the juristic discourse through three main points of development. The first part will deal with the birth of the discourse and its continuation up to the fourth/tenth century. The second part will deal with the developed debates in the fifth/eleventh century. The third part will deal with the continuation and revision of the debates after the Mongol invasions and the destruction of the caliphate in 656/1258. The final part of the book will focus on analyzing the implications of the

[9] Some scholars have invited me to adopt the word "terrorism" as a faithful translation of the term *ḥirāba*. I decline to do so largely because I believe this to be an anachronism. Terrorism, as a concept, accompanied the emergence of the notions of political crime and national liberation in the modern age. As I argue later, *ḥirāba* does share many similarities with contemporary conceptions of terrorism, but in order to preserve the historical flavor of this work, I have used the terms bandits and brigands as synonymous with *ḥirāba*.

[10] For an insightful study on the ways that accusations of heresy and rebellion overlap, see Fierro, "Heresy."

process by which this field developed for our understanding of the dynamics of Islamic law. I will also trace the development of the discourses on rebellion in the contemporary age, primarily as a means of exploring the potential of pre-modern discourses for the modern age.

CHAPTER 1

# *Modern scholarship and reorienting the approach to rebellion*

## ISLAMIC REBELLION IN MODERN SCHOLARSHIP

*Aḥkām al-bughāh*, or the juristic discourses on rebellion, have received very little attention in both non-Muslim and Muslim modern scholarship. Nevertheless, there has been no shortage of statements about the absence of a right to rebellion in Islamic legal discourses. Most commentators have tended to focus on the history of Islamic discourses on the caliphate, and then deduced from this history the Islamic position on rebellion. Very little attention has been given to the specific juristic tradition from which *aḥkām al-bughāh* arose, or to the specific legal paradigm upon which Muslim jurists relied. Contemporary commentators have tended to treat Muslim juridical pronouncements on the duty of obedience to those in power as if they are a genre of political thought or theory. The legal culture that provided these jurists with the terms of their discourse, and that imposed modes of thought and expression, has been largely ignored.[1]

In its most basic formulation, the accepted thesis is that Muslim jurists moved from the absolute realm of political idealism to an absolute realm of political realism. Muslim jurists insisted on strict qualifications for the position of caliph, and insisted that the caliphate only be assumed through a proper *ʿaqd* (contract) and *bayʿa* (pledge of allegiance). The caliph had to be pious and just, and had to enforce the *Sharīʿa*.[2] Importantly, only a single, just *imām* may represent the *khilāfa* and the *umma*. If

[1] Al-Azmeh (*Muslim*, 171) recognizes the specifically legalistic nature of the juristic theories of the caliphate. However, as will be noted, when it comes to juristic discourses on rebellion, al-Azmeh himself fails to heed his own warning against ignoring the legalistic nature of Islamic juristic discourses. Enayat (*Modern*, 4) notes that pre-modern Islamic political thought was always subsumed under some other discipline. Rosenthal (*Political*, 31) notes that pre-modern Muslim jurists were not political philosophers, and that politics as a discipline did not interest them. But he does not take account of the specific legal culture of Muslim jurists.

[2] On the traditional qualifications demanded of the caliph, see Gibb, "Constitutional," 6–14.

the caliph is neither legitimate nor just, the *umma* may remove him and replace him with another.

These requirements and qualifications were a pious ideal which perhaps was never realized. According to H. A. R. Gibb, in response to the Khawārij's anarchy and fanatical revolts, the jurists were increasingly forced to deprecate the right of rebellion against an unjust *imām*.[3] The two civil wars in early Islam and the constant rebellions in the first two centuries pressured Muslim jurists to emphasize the duty of obedience to the ruler, whether just or unjust, and to engage in endless polemics about the evils of rebellion and anarchy. In other words, Muslim jurists reacted by going to the other extreme – from an extreme of idealism to an extreme of realism.[4]

The power and influence of the ᶜAbbāsid caliphate steadily decreased throughout the third/ninth century. By the fifth/eleventh century, it had been reduced to virtual impotence. According to Gibb, the first theoretical and systematic compromise was a pious invention by the Shāfiᶜī jurist al-Māwardī (d. 450/1058) as he attempted to defend the caliphate against the Buwayhid warlords and the Fātimids ruling Cairo. Under certain conditions, al-Māwardī recognized the legitimacy of usurpation as a means of coming to power in the provinces. Al-Māwardī argued that the usurper, by pledging allegiance to the caliph and complying with certain conditions, became the caliph's agent.[5] Effectively, al-Māwardī had created a legal fiction of sorts:[6] under certain circumstances a usurper could become the caliph's agent even if the caliph had no real power to restrain or direct his agent. Gibb insists that al-Māwardī had opened the door for the eventual supremacy

[3] Ibid., 6. [4] Ibid., 15.

[5] Ibid., 18–19; Gibb, "al-Māwardī's"; Watt, *Islamic*, 101–2; Lambton, "Changing," 55. Al-Azmeh (*Muslim*, 169) argues that systematic, juristic statements on the caliphate were a fifth/eleventh-century innovation by al-Māwardī and Abū Yaᶜlā.

[6] In this context, Rosenthal (*Political*, 30–1) states:

> What appears to us as pious fraud, as born of political expediency, as condoning aggression and brute force must be set against the overriding principle ruling the guardians and interpreters of Muslim law: to preserve the unity of the Muslim community under the authority of the *khalīfa* whose religious aura increased in proportion to the decrease of his effective power and authority.

Evidently, Rosenthal is not aware of the quite common use of legal fictions in Islamic and non-Islamic legal systems. I would argue that Muslim jurists were not necessarily preserving the unity of community. Rather, they were doing what was, by training and habit, dictated by their legal culture; that is, resolving conflict and maintaining order. See below on the function of law and the roles of jurists.

of political expediency over legal order. I will quote Gibb at length because it is important to demonstrate the tenor of his argument on this point. Gibb states:

> It must be supposed that in his zeal to find some arguments by which at least the show of legality could be maintained, al-Māwardī did not realize that he had undermined the foundations of all law. Necessity and expediency may indeed be respectable principles, but only when they are not invoked to justify disregard of the law. It is true that he seeks to limit them to this case, but to admit them at all was the thin end of the wedge. Already the whole structure of the juristic theory of the caliphate was beginning to crumble, and it was not long before the continued application of these principles brought it crashing to the ground.[7]

Gibb argues that Muslim political theory increasingly became an after-the-fact rationalization of actual historical practices, as Muslim jurists ignored any moral imperatives and focused solely on the element of power.[8] Muslim jurists not only sanctioned the authority of those who usurped power, but also made obedience to them a moral and legal, as well as religious, obligation. Thus, according to Gibb, the belief was fostered "that rebellion is the most heinous of crimes, and this doctrine came to be consecrated in the juristic maxim, 'Sixty years of tyranny are better than an hour of civil strife.' "[9]

The Seljuks gained control of Baghdād in 447/1055, shortly before al-Māwardī's death. The next main figure usually mentioned in this context is the Shāfiʿī jurist Abū Ḥāmid al-Ghazālī (d. 505/1111).[10] Al-Ghazālī wished to reconcile the temporal powers of the sulṭānate to the religious authority of the caliph. The caliph would officially confer the title of sulṭān upon sovereign princes in the temporal field. Hence, al-Ghazālī went further in legitimating usurpation as a lawful means of gaining power. According to Ann Lambton, he was preoccupied with the threat of internal disturbances (*fitan*), and the dangers posed by the Bāṭinī movement to Sunnī Islam. He was far less concerned with the danger posed by the external threat of the Crusades.[11] Al-Ghazālī placed

[7] Gibb, "al-Māwardī's," 164. Mikhail (*Politics*, 43) criticizes Gibb's overly dramatic presentation of al-Māwardī but seems to accept Gibb's basic conclusions.

[8] Gibb, "al-Māwardī's," 162; Lambton, *State*, 84.

[9] Gibb, "Constitutional," 15. Enayat (*Modern*, 12) lends his support to this argument in stating: "Acknowledging the necessity of strong government . . . is one thing; justifying tyranny in the name of religion is another. The price of medieval flexibility was to sanctify the latter position, which soon became the ruling political doctrine among the majority of Muslims of all sects."

[10] Imām al-Ḥaramayn al-Juwaynī (d. 478/1085), al-Ghazālī's teacher, frequently receives honorable mention in this context. See Lambton, *State*, 104–5; Mikhail, *Politics*, 50. I deal with al-Juwaynī's views later.

[11] Lambton, *State*, 109.