

# Applying the Islamic Law of Rebellion to a Modern Context

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*Does Islamic law require unconditional obedience to political leaders? Is there an obligation to revolt against despotic oppressors? By following the historical development of the right to rebel in Islamic law, this paper attempts to answer these questions while serving as a corrective for binary thinking. It explores the spectrum of views on this topic and rejects the proposition that the Islamic law of rebellion is either pro or anti revolution, and it examines how the traditional principles can be applied to a modern context.*

Introduction.....	2
I. The Process of Islamic Law.....	3
II. The Principles of the Islamic Law of Rebellion.....	5
A. Presumption in Favor of Stability.....	5
B. Just Causes.....	8
1. Religious Justifications.....	8
2. Political Justifications.....	9
III. Applying the Principles to a Modern Context.....	12
A. The Principle of Stability is Overemphasized.....	13
B. Just Causes Must Incorporate Modern Grievances.....	15
C. The Balancing Test Should Consider New Factors.....	17
Conclusion.....	19

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## INTRODUCTION

Legal systems and political revolutions exist on opposite ends of the political spectrum. The law serves as a bulwark against spontaneous forms of justice and the deterioration of social order. Whereas revolutions are extra-legal attempts to overthrow an existing political, economic, or civil institution. They depend on people taking the law into their own hands to dismantle the “collective wisdom of the ages.”<sup>1</sup> Even in the most democratic of societies, these extra-legal attempts to overthrow a government are by their very nature criminal acts. However, most contemporary political “revolutionaries” do not fall into this radical category. They simply seek to utilize the existing political system in incrementally modified ways. The law inherently supports this effort because it is conservative in nature, favoring order and stability so that conflicts may be peacefully resolved.<sup>2</sup> This bedrock principle of stability supersedes any attempt to radically disrupt the social order. It is often manifested as a categorical legal imperative to obey those in power in both secular and Islamic legal systems.

In the formative years of Islam, there was a strong legal presumption in favor of the status quo.<sup>3</sup> Some modern commentators mischaracterize this presumption as a rule compelling pacifism.<sup>4</sup> They cherry-pick Quranic verses and Hadith of the Prophet enjoining obedience to rulers and draw one-sided conclusions. This reductive view ignores the political context in which these laws were created. Although Islamic law is believed to be divine in origins, it developed by “creatively respond[ing] to the socio-political dynamics of society placed within a specific historical context.”<sup>5</sup> Therefore, scholars can examine the principles that informed the traditional rulings to determine whether they still apply today. In doing so, we find that Islamic law did in fact value stability, like any legal regime, but it also placed checks and balances on rulers. Instead of outlawing or sanctioning rebellion entirely, Islamic law permitted it in certain narrow circumstances.

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<sup>1</sup>. See EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE (1790).

<sup>2</sup>. KHALED ABOU EL FADL, REBELLION AND VIOLENCE IN ISLAMIC LAW 18, 325 (2001).

<sup>3</sup>. *Id.* at 115.

<sup>4</sup>. Walla Quisay & Thomas Parker, *On the Theology of Obedience: An Analysis of Shaykh Bin Bayyah and Shaykh Hamza Yusuf's Political Thought*, MAYDAN (Jan. 8, 2019), <https://themaydan.com/2019/01/theology-obedience-analysis-shaykh-bin-bayyah-shaykh-hamza-yusufs-political-thought/>.

<sup>5</sup>. FADL, *supra* note 2, at 322.

This paper explores the spectrum of views on this topic and rejects the binary that Islamic law is either pro or anti revolution. Section II gives a brief overview of the process of Islamic law. Section III examines the generally agreed upon principles of the Islamic law of rebellion. Section IV will discuss which traditional principles can be incorporated, distinguished, or discarded in a modern context.

### I. THE PROCESS OF ISLAMIC LAW

Islamic law (“sharia”) is an attempt to discern the divine will of God from the text of the Quran. Choosing to believe in the Quran’s divine origins is a question of faith. But creating a system of rules based on the text of the Quran is a fairly routine legal process. The issue is sometimes straightforward. When the Quran says, “O you who have believed, decreed upon you is fasting,”<sup>6</sup> a believer can surmise that fasting is obligatory and a non-believer can rationally concur in that judgment. Unfortunately, the majority of the Quran is not so clear or self-explanatory. It is a non-literal non-linear piece-meal revelation that is often ambiguous and circular.

The ambiguity found in the text of the Quran is both a feature and a bug. In the best-case scenario, it allows scholars to respond to the changing needs and concerns of the society they live in. While this can make it difficult to pinpoint a clear answer on an Islamic legal question, this indeterminacy is considered a mercy of the Quran. As long as a believer follows a good faith interpretation of the text, they are considered to be in the good graces of their lord.<sup>7</sup>

There are drawbacks as well. A strict textualist can use the lack of clarity as an excuse to enforce rigid inflexible legal doctrines. By deriving rules exclusively from the text, they dismiss the constraints of historical tradition. Proponents of this approach strip the Quran of its ability to adapt to different contexts and freeze the development of Islamic law in time. Fortunately, the majority of early scholars quickly rejected this approach. They adopted a legal process that resembles modern statutory

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<sup>6</sup> Qur’an, 2:183.

<sup>7</sup> Nazir Khan, *Difference of Opinion: Where do We Draw the Line?*, Yaqeen Institute (Dec. 10, 2020), <https://yaqeeninstitute.org/nazir-khan/difference-of-opinion-where-do-we-draw-the-line> (“When the Caliph Hārūn al-Rashīd asked to implement Imām Mālik’s works of jurisprudence across the ummah for everyone to follow, Imām Mālik objected, saying: O Leader of the Believers, differences between the scholars is a mercy from God for this ummah. Each follows what he believes to be correct, each upon guidance, each seeking Allah.”) (citation omitted).

interpretation. The result is a traditional theory of jurisprudence that recognizes four sources of Islamic law: the Quran, actions and sayings of the Prophet (“sunnah” and “hadith”), analytical reasoning (“ijtihād”), and consensus (“ijmāa”).<sup>8</sup>

The first and primary source is the text of the Quran. As is often the case, if a clear legal ruling cannot be plucked out of the verses of the Quran, the Sunnah acts as an interpretative guide of the text. But reading the text of the Quran through the lens of the Sunnah is not self-evident. It requires rigorous analytical reasoning to derive universal principles from historical events. During this process, scholars can choose to prioritize different sources of knowledge. For example, some favor the written record, others the oral tradition. Because this effort is subject to reasonable differences, Islamic law relies on the consensus approach. It is very common to hear about the “majority” or “minority” opinion when discussing contentious legal topics. While a centralized judicial system limits the inputs to a single courtroom, Islamic law expands both the geographical and temporal scope. It allows modern scholars to examine all the opinions of rigorous scholarship on an issue before giving an opinion.

For a topic as complex as political revolutions, the Quran cannot be independently relied upon to derive a legal ruling. Unfortunately, the life of the Prophet does not give us much guidance on the issue either. Many of his statements on political revolutions are contingent on a specific context and cannot be used to derive a universal law. He never gave a detailed assessment of if and when it would be acceptable to rebel against a leader. During the life of the Prophet, the issue was rather simple. The Prophet was both the undisputed spiritual and political leader of the early Muslims. To rebel against him would be to deny the word of God. This unique situation cannot be the basis for contemporary legal opinions. The Companions of the Prophet are authorities on issues that were not addressed during the time of the Prophet. However, even they contradict one another on this issue in the years after the Prophet died. Some Companions supported rebellions, others opposed them, and others participated in them. All these actions became precedents that preclude a clear rule.

Because the primary sources are inconclusive, the following Section engages with the opinions of legal scholars. I attempt to identify a judicial

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<sup>8</sup>. Farooq A. Hassan, *The Sources of Islamic Law*, 76 AM. SOC’Y OF INT’L L. 65, 66-67 (1982).

consensus among the different points of view and summarize my findings under generally agreed upon principles that have the most support in Islamic legal history.

## II. THE PRINCIPLES OF THE ISLAMIC LAW OF REBELLION

This Section organizes the doctrine of the Islamic law of rebellion into four general principles. First, Islamic law favors stability and order over rebellion and chaos. Second, rebels can only disrupt the stability if they have a just cause. Third, even if there is a just cause, rebels must conduct a balancing test to determine whether the benefits of rebelling outweigh the costs. Fourth, rulers must give defeated rebels a certain degree of tolerance and clemency during and after the rebellion.<sup>9</sup>

### A. *Presumption in Favor of Stability*

The principle of stability is the common denominator among legal regimes. It is so foundational; it often does not require an explicit mandate. Governments are inherently charged with maintaining order and stability, and legal systems are the vehicles through which governments accomplish this goal. Islamic scholarship fits into this broader legal tradition. Its scholars functioning under historical imperatives that cautioned stability for the greater good. “The emphasis of early writers was on order and the need to obey the ruler.”<sup>10</sup> Sunni jurists in particular “upheld the need for stability and order,”<sup>11</sup> holding that even “an unjust ruler is better than the anarchy that results from civil wars or rebellions.”<sup>12</sup> Since disorder was generally seen as worse than injustice, obeying the ruler was a part of obeying God. In early Islamic legal discourses, the word used for rebels, “*khawarij*,”<sup>13</sup> later became a disparaging term for someone who left the fold of Islam.

As long as the leader fulfilled the basic responsibilities inherent in government, the public was required to reciprocate aid and obedience.<sup>14</sup>

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<sup>9</sup>. FADL, *supra* note 2, at 237–38 (these rules are known as *ahkam al bugha* which translates to rules of rebellion).

<sup>10</sup>. *Id.* at 15.

<sup>11</sup>. *Id.* at 232.

<sup>12</sup>. *Id.*

<sup>13</sup>. *Id.* at 118.

<sup>14</sup>. *Id.*, at 195, quoting “*al- Ahkam al-Sultaniyya*” (Ordinances of Islamic Government) of both al-Mawardi and Abu Yacla.

Disagreement with the political decisions of a leader was never grounds to revolt and forcefully remove them from office.<sup>15</sup> The maxim that “[s]ixty years of tyranny are better than an hour of civil strife”<sup>16</sup> informed these rulings. As did the belief that without a foundation for order, the possibility of justice would be denied. One jurist stated that “people should always weigh the harm that results from rebellions against the harm of obeying an unjust ruler; in most cases the harm is greater because it leads to the shedding of blood. . . The presumption should be in favor of the status quo.”<sup>17</sup> Al-Ashari, the father of the dominant theological school in Sunni Islam, emphasized the virtue of obedience in his writing. He wrote, “we maintain the error of those who hold it right to rise against the [leaders] whomsoever there may be apparent in them a falling away from right.”<sup>18</sup> These positions are seemingly consistent with the Prophet who, according to one hadith, said, “listen and obey, in hardship and in good, in what is pleasant or unpleasant, and prefer them (the rulers) over yourself even if they usurp your wealth or strike your backs.”<sup>19</sup>

Despite the presumption in favor of stability, leaders in the Islamic world were not protected from revolutionary forces. Since the early centuries of Islam, “power was obtained and retained by force.”<sup>20</sup> This political reality informed the early legal positions of Muslim jurists. Rulers attempted to assert their legitimacy based on claims of piety or hereditary right. But regardless of how a leader came to power, it was generally advised that they should be obeyed.<sup>21</sup> Very little scholarly attention was given to their source of legitimacy. The only relevant consideration was whether they, “establish[ed] order and stability. If order and stability exist, then rebellion is by necessity forbidden.”<sup>22</sup>

The four pillars of Sunni legal jurisprudence are the Shafi, Hanbali, Maliki, and Hanafi schools. They all recognize the legitimacy of status quo leaders and accept the necessity of obeying the usurper of power. These concessions to power were not invitations to rebel. The scholars were

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<sup>15</sup>. FADL, *supra* note 2, at 195.

<sup>16</sup>. *Id.* at 10.

<sup>17</sup>. *Id.* at 181, *referencing* Al Juwaiani.

<sup>18</sup>. DUNCAN B. MACDONALD, DEVELOPMENT OF MUSLIM THEOLOGY, JURISPRUDENCE, AND CONSTITUTIONAL THEORY 298 (2011).

<sup>19</sup>. FADL, *supra* note 2, at 112.

<sup>20</sup>. *Id.* at 187.

<sup>21</sup>. *Id.* at 187.

<sup>22</sup>. *Id.* at 239.

merely responding to the political realities of their day. Al-Ghazali, a prominent scholar who inspired the Sufi tradition, defended the legitimacy of the Abbasids to prevent a Fatimid invasion.<sup>23</sup> As a general principle, he argued that government, “is a consequence solely of military power. To whatever person the holder of military power professes allegiance, that person is the caliph.”<sup>24</sup> Rather than focus on who was a just or legitimate ruler, the Shafi school held that people should obey a ruler who was given “bayiah” (pledge of allegiance).<sup>25</sup> The Hanbali school left no room for doubt that, “whoever wins should be recognized as the rightful ruler.”<sup>26</sup> A prominent student of the Hanbali school, Ibn Taymiyyah, argued that “government is a function of raw power, and it is impossible to distinguish the just from the unjust because everyone fights over world affairs.”<sup>27</sup> Therefore, the source of power and authority are inconsequential.

The principle of stability applies to the actions of a ruler as well. In the traditional view, a ruler is prohibited from ordering the population to fight rebels who have a just cause. Once a ruler decides to respond to a rebellion, they should not seek to kill all rebels but to simply quell the rebellion to prevent disorder in society. These are deescalating principles that seek to contain the violence on both sides. Ibn Taymiyyah was the most vocal proponent of this view. He argued that it was impermissible to rebel or to fight rebels for political reasons. While he criticized rebels for causing disorder in society and rejected “the use of force against those in power,”<sup>28</sup> he also argued against the use of violence from the ruler. He believed that God did not command the fighting of rebels. Rather, “he decreed reconciliation between the contending parties, and enjoined that one abstain from being involved in [the tribulation].”<sup>29</sup> Since one should not obey a ruler who commands something contrary to God’s will, if a ruler orders you to fight a rebel, Ibn Taymiyyah says you can refuse. Furthermore, even if a ruler is unjust, he argued that we should “leave him to the demands made upon him. . . God punishes one oppressor by another,

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<sup>23</sup>. See ELTON DANIEL, INTRODUCTION TO AL-GHAZALI’S ALCHEMY OF HAPPINESS (1995).

<sup>24</sup>. *Id.* at xxi.

<sup>25</sup>. *Id.* at 283.

<sup>26</sup>. *Id.* at 188.

<sup>27</sup>. *Id.* at 270.

<sup>28</sup>. FADL, *supra* note 2, at 98.

<sup>29</sup>. *Id.* at 273.

and then destroys them both together.”<sup>30</sup> In short, the principle of stability cautions Muslims against fighting for either oppressive rulers or self-righteous rebels.<sup>31</sup>

## B. *Just Causes*

### 1. *Religious Justifications*

Given the presumption in favor of stability, any legally justified revolution must be necessarily limited to extremely narrow circumstances. Traditional Islamic jurists agree that a leader should not be obeyed if his commands are contrary to God’s will. But it is not immediately clear how far this principle should extend.

For example, is it limited to the public decrees of a ruler, or does it extend to their private life as well? The Quran says, “Divine legitimacy is acquired when the leader obeys Allah and the Prophet; only then is he entitled to people’s obedience.”<sup>32</sup> This principle is traced back to the earliest periods of Islamic history. The Prophet was reported to have said, “the worst of your rulers are those whom you hate and who hate you, who curse you and whom you curse.”<sup>33</sup> His Companions asked, “Shouldn’t we overthrow them for this?”<sup>34</sup> He replied, “No, *as long as they establish prayer among you*. One who has a governor appointed over him and he finds that the governor indulges in an act of disobedience to God, he should condemn the governor’s act, in disobedience to God, but should not withdraw himself from his obedience.”<sup>35</sup> This is a very important principle. Essentially, the Prophet held that a leader could disbelieve in private, but as long as they guarantee religious freedoms, they should be obeyed. It is the denial of religious freedom itself that is the valid justification to rebel. Not the lack of religious piety in a leader.

When Abu Bakr, the political successor to the Prophet, addressed his followers after the Prophet’s death, he seemingly blurred this difference. He said, “As I obey God his prophet, obey me: if I neglect the laws of God and the Prophet, I have no more right to your obedience.”<sup>36</sup> There are two

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<sup>30</sup>. *Id.* at 285.

<sup>31</sup>. *Id.* at 275.

<sup>32</sup>. Qur’an, 4:59.

<sup>33</sup>. Sahih Muslim, Book 20, Number 4574.

<sup>34</sup>. *Id.*

<sup>35</sup>. *Id.* (emphasis added).

<sup>36</sup>. AMIR ALI, A SHORT HISTORY OF THE SARACENS 22 (1899) (emphasis added).



possible interpretations of Abu Bakr's statement. The first is that Abu Bakr encouraged his followers to impeach him for his personal religious shortcomings. However, there is zero historical support for this interpretation. No legal procedures were ever devised to test the faith of a leader in an increasingly diverse and fractured empire.<sup>37</sup> No legislative council of Islamic jurists has ever voted to remove a leader for personally disobeying the word of God, let alone a leader conceding to this authority.<sup>38</sup> A system of governance that hinges on personal religious obedience of its ruler would be largely inapplicable from the moment it was articulated. For these reasons, this first interpretation is understood to be a guiding ethos instead of a legal imperative.

However, if Abu Bakr considered his leadership to be conditional upon allowing people to worship God freely, then this is consistent with the Prophet's earlier decree and generations of Islamic jurisprudence. Scholars generally agree that a ruler must uphold public worship, and they must allow individuals to practice Islam freely,<sup>39</sup> and that if a ruler does not uphold these laws, they can and should be replaced.<sup>40</sup> This sentiment was later fashioned into a maxim of law, that the "subject owes a duty of complete and unquestioning obedience to the [leader]. If, however, the [leader] commands something that is contrary to God's law, then the duty of obedience lapses, and instead it is the duty of the subject to disobey-and resist-such a command."<sup>41</sup>

## 2. *Political Justifications*

Ibn Taymiyyah distinguished between theological and political causes of action. He advised against engaging in wars over political issues. But encouraged them if they were rooted in a defense of religious freedom. Subsequent legal scholars then fleshed out the notion of political wars even

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<sup>37</sup>. *Id.*

<sup>38</sup>. *Id.*

<sup>39</sup>. FADL, *supra* note 2, at 184, describing Al Ghazali's belief that a ruler cannot be obeyed if they order something against God's command.

<sup>40</sup>. Jackson, *supra* note 37, at 85 (According to Rashid Rida, the caliph "was to be obeyed only to the extent that his decisions conformed to the principles of Islam and served the public interest." Otherwise, the community, through its representatives, "had the right to challenge his decisions whenever they deemed them to contravene these principles.").

<sup>41</sup>. Sherman Jackson, *From Prophetic Actions to Constitutional Theory: A Novel Chapter in Medieval Muslim Jurisprudence*, 25 INT'L J. OF MIDDLE EAST STUD. 71, 72 (1993) quoting ANNA K. S. LAMBTON, STATE AND GOVERNMENT IN MEDIEVAL ISLAM (2013).

further. They created two categories of political dissidents.<sup>42</sup> The first seek to radically restructure society and reject the foundations of law and order. These people are generally disfavored in Islamic law—and any established legal system for that matter. The second seek to maintain the institutions of power but replace the head of state. They are granted legal legitimacy but don't receive the same degree of support as groups who resist for religious justifications. In discussing the second group, Imam Shafi left the door open for the “possibility of declaring if need be certain rebellions justified because the ruler is unjust.”<sup>43</sup> In this context, “unjust” suggested political non-theological disputes. Ibn Taymiyyah accused Al-Shafi of opening the door for rebellion and civil discord. Although he agreed with the principle in theory, he argued that the slippery slope could lend justification to any political group seeking power.

Ultimately, this calls to question the issue of political legitimacy. A legitimate ruler is one who is accepted as the source of authority in a particular area. The absence of legitimacy can result in chaos, competing factions, or in the worst case, a civil war. Understood in this sense, legitimacy goes hand in hand with the ability to maintain peace and order in society. Islamic law recognizes that legitimacy can serve as a pacifying force for society. As long as a leader can maintain the peace, they are generally considered legitimate. The leader with a legitimate claim to power, would also have the Islamic mandate to rule, for they are best situated to ensure stability and peace. Conversely, an illegitimate leader can be rebelled against for the very reason that they can't bring the population under control. The lack of political legitimacy is a justification to rebel only if the illegitimate leader violates the fundamental principle of stability.

#### A. *Balancing Test*

Scholars who permitted revolutions in theory were still generally opposed to them in practice. They articulated a functional argument rooted in a balancing test for why rebellions were not allowed. “Rebels should balance the chance of success and weigh it against the potential harm that will result from the rebellion. If the potential harm to society is grave, and

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<sup>42</sup>. FADL, *supra* note 2, at 247 (“[J]urists of the traditional tend emphasized the difference between rebels who accept the legitimacy of Sunni Muslim society but rebel against the political order, and rebels who accept neither the legitimacy of the political order nor the society it rules.”).

<sup>43</sup>. *Id.* at 149.

the chances of success are limited, then rebellion is prohibited. However, if the chances of success are reasonably good, and the harm to society is limited, then rebellion is permitted.”<sup>44</sup>

Applying this test, Ibn Taymiyyah argued that armed revolutions were always prohibited because they never brought about positive change. Under this theory, revolutions were not discouraged because they were inherently wrong, but because of their attendant consequences. While endorsing the balance of “pros and cons” in theory, he did not believe that a balance of evils would ever support an armed insurrection.<sup>45</sup> To support his argument, he cited rebellions throughout Islamic history that all resulted in a net harm to society.<sup>46</sup>

### B. *The Rights of Rebels*

According to the majority of Islamic scholars, a rebel with a plausible interpretation (Section II.B),<sup>47</sup> and a legitimate chance of success (Section II.C) is not a sinner, and therefore deserves clemency.<sup>48</sup> This principle is commonly ignored by modern Muslim-majority governments, because it limits the power of leaders to indiscriminately fight and punish rebel groups. Even jurists such as the Hanafis who considered rebellion a sin were not willing to declare it a punishable crime.<sup>49</sup> Some jurists argue that rebelling against an unjust ruler provides the presumption of a legitimate cause.<sup>50</sup> This cuts against the legalistic moral arguments that are used to de-legitimize rebels and treat them poorly.

Even if the rebels are not legitimate, *takfir*—the practice of declaring

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<sup>44</sup> *Id.* at 286.

<sup>45</sup> *Id.* at 274.

<sup>46</sup> *Id.* at 273 (“Throughout the ages. . . many jurists and religious people have risen in armed insurrection, believing in the correctness of their interpretation or cause. These people sought to enjoin the good and forbid the evil, or to establish justice, but all they ever achieved was to spread fitna and bloodshed. Invariable they caused more harm than good by rebelling, and they realized at the end that their efforts, even if well intentioned, were entirely misguided and in vain.”).

<sup>47</sup> FADL, *supra* note 2, at 179 (Abu Ishaq, a Shafi jurist, held that “rebels who rely on a plausible interpretation or cause are to be considered a form of mujtahid (valid legal opinion) and therefore should not to be treated as common criminals.”).

<sup>48</sup> *Id.* at 182.

<sup>49</sup> *Id.* at 232 (Explaining the difference between the Hanafi school which held that rebels are sinners and the Hanbali, Maliki, and Shafi schools that held rebels are not sinners).

<sup>50</sup> *Id.* at 283 (“By definition, if the ruler is unjust the rebels are deemed to have a plausible interpretation or cause.”).

Muslims outside the fold of Islam—must be avoided. Otherwise, rulers could easily discount the legitimacy of a cause in order to fight rebels by claiming they are non-believers. Even absent a legitimate cause, if a group has strength, they can be deemed legitimate.<sup>51</sup> This is justified on the grounds of the public interest in achieving reconciliation and social peace. While the jurists “insisted on the need for order and stability, they also expanded the scope of *ahkam al buhghah* in significant ways and refused to lend support to unjust rulers.”<sup>52</sup> By the eleventh century, the discourse on *ahkam al buhghah* had become firmly established, and “clear schools of thought had developed on the issue of how rebels are to be treated.”<sup>53</sup>

Here are examples of laws protecting rebels: a rebel who surrenders cannot be imprisoned after the battle ends and “may be released before the end of battle if he takes an oath of allegiance in favor of the just ruler.”<sup>54</sup> Funeral prayers should be performed on dead rebels and, at a minimum, rebels may not be executed and their property may not be confiscated.<sup>55</sup> One of the earliest manifestations of this principle was demonstrated by Ali ibn Abi Talib, the fourth Caliph (successor) of the Prophet. In an apocryphal exchange between Ali and his commanders after quelling a rebellion, Ali offered mercy to the rebels. Ali was asked if the rebels were unbelievers, and he said no. He was asked if they were hypocrites, and he said no. He was then asked, “what are they?” and he responded: “They are our brethren, who have treated us unjustly.” Ali set them free and did not kill or imprison them.<sup>56</sup> This incident sets a very clear precedent for the degree of clemency rulers are required to grant political prisoners.

### III. APPLYING THE PRINCIPLES TO A MODERN CONTEXT

It is a universally acknowledged truth that a legal ruling deduced on the basis of context is no longer binding when that context no longer exists. Yet, many people cling to the traditional Islamic laws of rebellion without attempting to consider the vastly different circumstances that informed those laws. Professor Sherman Jackson argues that this decontextualized analysis violates the Islamic legal process, and that it is “an open display

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<sup>51</sup>. *Id.*

<sup>52</sup>. *Id.* at 271 (the early equivalent of the laws of war and the protections found under the Fourth Geneva Convention).

<sup>53</sup>. *Id.* at 23.

<sup>54</sup>. *Id.* at 160.

<sup>55</sup>. *Id.*

<sup>56</sup>. *Id.* at 125.

of ignorance of the religion,”<sup>57</sup> to hold on to “rulings that have been deduced on the basis of custom, even after this custom has changed.”<sup>58</sup> He explains that “[j]urists relied on custom in virtually every area of Islamic law” and it is the “duty of every jurist to give due consideration to the specificities of the time and place.”<sup>59</sup> This Section attempts to give due consideration to the modern specificities that affect the Islamic law of rebellion. Each principle of law is analyzed independently to determine which of them should be distinguished in a modern context.

#### *A. The Principle of Stability is Overemphasized*

Modern legal systems emphasize the importance of stability to almost the same degree as traditional Islamic law. However, because of the development of modern governance, Islamic law provides too much deference to the status quo. Early Islamic scholars had to consider that three out of the four successors of the Prophet were assassinated. And every few hundred years, Islamic empires would split or be torn apart, and authority would be claimed by new entities.<sup>60</sup> There has rarely, if ever, been a peaceful transition of power in Islamic history. Given the volatile nature of politics, Islamic law tended to overemphasize the virtue of stability. Scholars must now account with the changing dynamics of modern governance. First, the increasingly static boundaries of modern nation states. Second, the advent of participatory democracy. Third, the soft power of the human rights regime. These new stabilizing forces cut against the overly cautionary concerns of the traditional Islamic law of rebellion.

The nation state has been the primary structure of political power since the Treaty of Westphalia. Any scholar attempting to articulate a modern law of rebellion must reckon with this new political reality. The nation state is far more stable than any political structure that came before

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<sup>57</sup>. SHERMAN JACKSON, *ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION* 162 (2005).

<sup>58</sup>. *Id.*

<sup>59</sup>. *Id.*

<sup>60</sup>. Sunnis and Shias immediately disagreed on the role, appointment, and function of the successors of the Prophet. While there was relative peace in the transitions of power between the first four Caliphs, Muawiyah took leadership by force after Ali was killed and established the Umayyad empire. The Umayyads remained in control until the Abbasids overthrew them. The Abbasids claimed that the Ummayds were corrupt, despotic, nepotistic, and faithless. In time, the Safavids and Fatimds would level the same complaints at the Abbasids.

it, primarily because it enjoys legitimacy from the international community. Scholars like Ibn Taymmiyah and Al-Ghazali were fearful of foreign invasions. Many of their edicts reflected this justifiable fear. This same concern does not hold as much weight in a world in which interventions in another country's affairs are at least ostensibly forbidden.

Additionally, scholars must consider the changing dynamics of modern democratic systems. In a democratic society, dissent is not only permitted, but encouraged. Democracy fuels competing parties to battle in the marketplace of ideas. Traditional scholars issued categorical orders banning political dissent. Modern scholars must examine the limits of acceptable behavior for dissidents in a democratic society. Most Muslim majority countries do not exist in a functional definition of a democracy. Yet many Muslim polities aspire to democratic principles. The legal rulings must reflect this reality.

For example, the United States allowed dissidents to advocate for the downfall of the government if they did not pose a "clear and present danger."<sup>61</sup> The burden was later changed to require "imminent lawless action" in order to protect freedom of expression.<sup>62</sup> The ultimate question related to the proximity and degree of violence acceptable in society. Reasonable minds can disagree on where to draw the line, but Islamic scholars must first articulate a limiting principle before we can debate its rightful place.

These democratic principles are further supported by the advent of the human rights regime. The right to dissent has never been protected as much as it has today. People can now take to the streets in the hundreds of thousands to protest their leader and often make it home in time for dinner. Of course, it is not the benign nature of the human rights era that stays a despotic leader's hand. It is the combination of internal checks and balances of a modern democratic government and the pressure from the international community. Past scholars could never have predicted this reality. This context would be unthinkable in any pre-modern government. These factors combine to make governments far more stable than they were in the past. None of this is an absolute defense against violent government crackdowns. But they are new developments that scholars must at least consider. They suggest that a modern application of the principle of stability does not need to be as cautious as the traditional rule.

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<sup>61</sup>. See *Schenck v. United States*, 249 U.S. 47 (1919).

<sup>62</sup>. See *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Many modern Muslim majority governments have ignored this nuance in exchange for a categorical deference to power. They pass laws making it illegal to rebel against a leader, but they omit the rules that make it illegal for a ruler to oppress or punish rebels. The Saudi Permanent Council for Scientific Research and Legal Opinions (“Lajma”) offers one such example. In an official ruling, they said “contemporary groups that rebel against established Muslim rulers are (bandits) and should be killed. God and the prophet commanded that the [bandits] and Khawarij be fought without pause.”<sup>63</sup> The Iranian Government famously states that people have a duty to enjoin the good and forbid the evil. Yet, there is no clear democratic process that would allow individuals to do so. Rather, any efforts at holding the government accountable has been met with backlash and repression. The principle of stability has been weaponized to muzzle all political opposition to government when, in fact, this principle is merely the start of the analysis, not the end of it.

### *B. Just Causes Must Incorporate Modern Grievances*

In the traditional jurisprudence, a leader’s right to rule is forfeited if they order people to disobey God or prevent them from worship. In the modern context, freedom of religion is generally protected by most nation states. While religious discrimination still occurs, it rarely rises to the level of persecution in pre-modern times. As a consequence, modern political uprisings tend to embody secular grievances, not religious ones.<sup>64</sup> Rebels seek to gain political rights, civil rights, and the equitable distribution of resources.<sup>65</sup> Whether these causes are legitimate has not been sufficiently discussed in the context of Islamic law. This Section will attempt to start the conversation.

Starting with the question of political rights, which are the right to vote, to petition the government, to form political parties, and to run for office. At their core, political rights seek to ensure that a leader is democratically accountable. Although it was once considered a tangential issue, it is now an essential element of modern governance. Wars are waged and countries are torn apart over disputes of political rights and legitimacy. Stability is now dependent on political legitimacy. Traditional scholars did not extensively engage with this issue. And they certainly did

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<sup>63</sup>. *Id.* at 341.

<sup>64</sup>. *Middle-class Frustration Fueled the Arab Spring*, THE WORLD BANK (2015).

<sup>65</sup>. *Id.*

not produce a positive mandate to rebel against a leader who refuses to grant political rights. They generally conceded to whoever was in power as long as they maintained order and did not prevent them from worshipping God. Modern scholars must give credence to the importance of political legitimacy before deciding whether it has become a just cause to rebel.

Moving on to the issue of civil rights, which are generally understood to be the right to live freely with equal protection under the law. There is no shortage of primary sources that empower individuals to resist oppression and help the weak. The Quran “insists that a Muslim’s first duty is to create a just and egalitarian society in which poor people are treated with respect. This demands a jihad (effort or struggle) on all fronts: spiritual and social, personal and political.”<sup>66</sup> The text chastises its followers who “fail to fight in the cause of God, and for the oppressed men, women, and children.”<sup>67</sup> The Prophet said the best form of jihad is a “word of truth spoken before an unjust ruler,”<sup>68</sup> and “[w]hoever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart — and that is the weakest of faith.”<sup>69</sup> If obeying God means standing up for justice, can individuals rebel against a leader who violates their civil rights? Islamic law permits the act of waging war to defend one’s life, one’s property, and one’s freedom of religion. However, these principles never translated into affirmative legal judgements. It is unclear whether Islamic law permits an individual to rebel to gain civil rights.

Leaders of modern Islamic movements have made an effort to expand the list of just causes of rebellion. Sayyid Qutb, a leading member of the Muslim Brotherhood, declared that it was acceptable to rebel against a ruler who refuses to apply God’s law on Earth.<sup>70</sup> Qutb was part of a movement that sought to establish a Sharia compliant government. He took a position that sidestepped the heavy presumption in favor of the status quo. Rashid Rida’s ideas inspired 20th century Islamic thinkers to develop a political philosophy of an Islamic state. He argued that it was not only permissible, but “obligatory to overthrow rulers who cause corruption on the Earth by oppressing people.”<sup>71</sup> In his view, such rulers

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<sup>66</sup>. MOHAMOOD MAMDANI, GOOD MUSLIM, BAD MUSLIM 50 (2004).

<sup>67</sup>. Qur’an, 4:75.

<sup>68</sup>. FADL, *supra* note 2, at 123.

<sup>69</sup>. Sahih Muslim, Book 1, Hadith 84.

<sup>70</sup>. FADL, *supra* note 2, at 339.

<sup>71</sup>. *Id.*



lack legitimacy. Qutb and Rida's views were much more supportive of rebels than any Islamic scholar that came before them. Their contributions counterbalance the overly strict position espoused by Muslim majority governments.

### C. *The Balancing Test Should Consider New Factors*

Even if there is a legitimate cause to revolt, the chances of success must be weighed against the potential harm. Only if the chances of success are reasonably good, and the harm to society is limited, is rebellion permitted.<sup>72</sup> As a general matter, this is in line with the modern laws of war which hold that states should only go to war if they have a reasonable chance of winning.<sup>73</sup> This stems from the idea "that war is a great evil, no matter the cause. And it is wrong to cause suffering, pain, and death with no chance of success. Therefore, it would be unethical to sacrifice the lives of people in a futile gesture that would not change anything."<sup>74</sup>

As a general principle, this balancing test is directly applicable to the modern context. However, the factors on each side of the scale have changed dramatically from when it was first articulated. As one commentator put it, "To what degree can the modern state be compared to the Caliph, Sultan, or pre-modern ruler? What analogy can be made between a ruler who would have to wait months to put down a rebellion, would have to wait days or even weeks to receive news from his province, and a modern state which can throw you in jail for conversations over Facebook?"<sup>75</sup>

When considering the costs of a rebellion in a modern context, we must first ask whether the form of the rebellion is violent or peaceful. Given that states have standing armies, there is almost zero chance of a successful violent revolution. Most rebels understand this fact, which is why modern revolutions often begin as peaceful protests. Civil disobedience has become the *modus operandi*. It is usually only when the government responds with force that events take a violent turn. Scholars cannot condemn peaceful protestors using legal opinions that assumed all protests were violent. This is a misapplication of an outdated precedent.

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<sup>72</sup>. *Id.* at 286.

<sup>73</sup>. Alexander Moseley, *Just War Theory*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY <https://iep.utm.edu/justwar/>

<sup>74</sup>. *Id.*

<sup>75</sup>. Quisay, *supra* note 4.

Another factor to consider is the opportunity cost of resorting to a revolution. Modern democracies have devised a sustainable way to transition power without social breakdown and the loss of life. A revolution delegitimizes whatever existing form of democratic accountability that already exists. Take Egypt for example. After decades of despotic rule, the Egyptian population overthrew Hosni Mubarak during the Arab Spring and elected Mohamed Morsi. After one year, the military overthrew Morsi and General Abdel Fatah Sisi took control. Whatever one thinks of Morsi, this flippant attitude towards the democratic process has permanently stunted democracy in Egypt. One needs to be aware of this cost of rebelling. But there is also the cost of silence and conceding to power. Modern governments have had their “tyrannical dimensions amplified with Orwellian technologies that invade private spaces and facilitate barbaric forms of torture and inhumane degradation on a scale that was likely unimaginable to premodern scholars.”<sup>76</sup> New means of ensuring absolute obedience make it costly to acquiesce to an oppressive ruler.

The balancing test should take into account different factual realities on a case-by-case basis. There is no single answer to the question of whether a revolution is justified in the abstract—as some pundits writing about the topic suggest. The stakes involved in the balancing test are at the same time more amplified and greatly diminished. A government has the ability to be far more tyrannical than ever before. But there are also new means to engage in politics that did not previously exist.

#### D. *The Rights of Rebels Must be Applied*

The traditional Islamic laws protecting the rights of rebels can and should be applied in a modern context. Although there are implementation challenges, the Geneva Conventions are an example of how the traditional principles can be applied. Rejecting the notion of total war, these Conventions require the winning party to show mercy and clemency on rebels and prisoners of war. This is entirely consistent with Islamic principles.

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<sup>76</sup> Usaama al-Azami, *The Question in the Islamic Tradition: The Principle of Vocally Resisting Tyranny Has Always Remained at the Heart of the Islamic Tradition*, NEW AGE ISLAM (2019).

### CONCLUSION

According to many contemporary voices, Islam is either a pacifying or revolutionary force. In this paper, I rejected this reductionist view and demonstrated that the Islamic law of revolution is not a binary. While traditional scholars lend strong support to the status quo, they did not categorically condemn rebellion. There is a rich tradition of thought on the question of when and where it is acceptable to rebel, and how to properly protect the rights of rebels. I synthesized this body of law into distinct principles, and I tried to determine which of these principles are applicable in the modern context, but this effort is only a start. Islamic scholars must build on this inquiry while engaging with the realities of modern governments and contemporary issues. Any attempt by scholars and governments to provide a cookie-cutter answer to the question of whether a rebellion is justified must be rejected. Islamic scholars must provide a variety of responses to how one can respond to oppressive governments, ranging from open rebellion (if necessary) to democratic engagement (when applicable). Given the tumultuous nature of Muslim majority countries, this inquiry is not simply a theoretical one. It is a pathway to ensuring that leaders are held accountable for their actions, and that people cannot co-opt revolutionary sentiment for personal gain.