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978-0-521-03057-1 - Rebellion and Violence in Islamic Law

Khaled Abou El Fadl

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REBELLION AND VIOLENCE IN ISLAMIC LAW

Khaled Abou El Fadl's book represents the first systematic examination of the idea and treatment of political resistance and rebellion in Islamic law. Premodern jurists produced an extensive and sophisticated discourse on the legality of rebellion and the treatment due to rebels under Islamic law. The book examines the emergence and development of these discourses from the eighth to the fifteenth centuries, and considers juristic responses to the various terror-inducing strategies employed by rebels including assassination, stealth attacks, and rape. The study demonstrates how Muslim jurists went about restructuring several competing doctrinal sources in order to construct a highly technical discourse on rebellion. It also points to the ways in which they negotiated language, historical events, and religious doctrine to arrive at certain legal positions. Many of these rulings have been developed in response to challenges in Islam's history and have come to influence contemporary Islamic practices. This is an important and challenging book which sheds light on Islamic law and premodern attitudes to dissidence and violence.

KHALED ABOU EL FADL is an Acting Professor at the University of California Los Angeles School of Law. His publications include *Speaking in God's Name: Islamic Law, Authority and Women* (2001).

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*University of California Los Angeles
School of Law*



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*To my father, Medhat Abou El Fadl
To my mother, Afaf El-Nimr
For enduring so much, for patiently waiting,
And for tolerating rebellion.*

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About ten years ago, this book started out as an exploration into the subject of political violence and terrorism in the modern Islamic world. I was particularly interested in the contemporary juristic treatments of rebellion and irregular warfare. At the conceptual level, the idea that the state ought to have a monopoly over the use of force against its foes appeared to me to be profoundly unreasonable. It seemed confounding that a fairly small armed elite is empowered to use force against some people (usually dissidents) in the name of all the people (the faceless masses). The many theories of representation and delegation of authority failed to make this proposition more coherent. At the same time, the idea that all individuals and groups in society should be armed and empowered to inflict damage upon each other did not make better sense. Therefore, I was interested in examining the ways in which the so-called guards of justice and order, namely the institutions of law, negotiated the resolution of conflicts in situations where order is frustrated and justice is challenged. After spending a couple of years reading on the issue, I became thoroughly bored. As far as the secondary literature was concerned, the cause of my boredom was not the lack of exciting books, essays, and otherwise learned treatises. What induced my boredom was that the methodologies and conclusions of many commentators were far more predictable than the dynamics and objectives of the movements they studied. Many of the commentators seemed to take an event or a set of events, and generalize about the past, present, and future. They seemed to think that the past inevitably led to the present, and that the present inevitably heralds the future. Many commentators spoke of long-established traditions of quietism, passivity, and acceptance of brutality. Since the subject of politically motivated violence and terrorism aroused strong feelings for all concerned, the field was ripe for result-oriented investigations, and sweeping generalizations that aimed to uphold or undermine one cause or another. Unfortunately, I found that by examining the social

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and institutional position of a particular commentator, I could easily predict the conclusions of the commentator, and whom that commentator will brand as a terrorist, victim, or hero. As far as the primary sources were concerned, the full and unmitigated co-optation of the processes and mechanisms of Islamic law by the modern state made the contemporary discourses quite dull. The contemporary Islamic discourse often appeared of a singular focus – the interests of the collectivity must prevail over individual interests, and rebels are the agents of sedition and chaos.

Several historians and political scientists argued that the stagnation of Muslim juristic discourses on issues related to political violence was a natural product of the historical processes of the Islamic political and legal experience. According to these authorities, Islamic law had played a consistently conservative legitimating role as far as the powers and functions of the state were concerned. And, thus, several prominent scholars concluded that Islam does not have and never has had a law of rebellion or a discourse on irregular warfare. For reasons explored in the book, I doubted that very much. For one, the premodern Islamic juristic heritage, unlike the contemporary legal practice, has always proved creative, inventive, and rich. As a result, I started an enthralling nine-year journey into the historical juristic discourses on methods of armed rebellion, terror, and other acts of defiance and destruction. The most fascinating part of this research has been the subtleties of the premodern juristic discourse. By carefully examining the particulars of the linguistic practice of the juristic discourse – the micro-discourses so to speak – I uncovered a highly symbolic, negotiative, and, at times, puzzling discourse. The shifts in legal doctrine were expressed in the most unassuming and technical fashion – texts that appeared to adhere to precedent were actually materially restructuring the field, and jurists who announced that they were reinventing the law turned out to adhere to precedent.

Ultimately, my plans were transformed, and I left the contemporary setting for what I believe to be a far more intellectually satisfying investigation. This is not a form of antiquarianism, but perhaps the traditional role that Muslim jurists played as mediators between the state and the God-fearing masses, and perhaps the epistemology and processes that permitted a semi-autonomous existence for the Islamic juristic culture, have now vanished. I consider this field to be too undeveloped for any firm conclusions, but I think it is reasonable to say that the premodern juristic culture hoped to limit the monopoly of the state over the use of force in ways that are inconceivable today. If the past serves as a source of inspiration and ideas, the juristic debates described in this book may

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have a renewed life, and may be transformed into normativities that influence the way contemporary Muslim culture thinks about political violence and terrorism.

As noted, this work focuses on the details of the juristic discourses and traces their various permutations and transformations over the course of several centuries. There is no alternative but to share with the reader those details, and as a result, at some points this book will have a discursive quality to it. I regret that this is inevitable considering that this book would be pointless unless the reader is given a near first-hand experience in the mechanics and practices of the text. The shifts and transformations in the legal doctrine are subtle and elusive, and this not only requires a careful reading, but also a precise and fastidious presentation. This book was written both to challenge some long-held assumptions about the dynamics of the Islamic juristic discourses and as a reference source on the law of rebellion in Islam.

A few mundane remarks are necessary. Since this work was done over a number of years, I was often forced to use several editions of the same work. For instance, some editions that I used in Princeton or Austin might no longer have been available to me in Los Angeles. Therefore, the bibliography and footnotes might cite different editions of the same work. In addition, I have consulted a large number of works that I did not cite. Unfortunately, because of concerns over the size of this book, I did not include these works in the bibliography. I apologize to these authors who influenced my thinking over the years, but whom I could not cite for any specific proposition or information. Again, because of concerns over size, I dispensed with the practice of giving the full reference the first time a book is cited. All citations in the footnotes are in short form. The reader is kindly asked to look in the works cited section for a full reference.

For aesthetic reasons, I have decided to ignore the *tashdid* at the beginning of transliterated words. In my view, a word starting with a double “s”, for example, looks awkward. I have placed the *hamza* only before the name Ubbi to facilitate pronunciation. Again, to help pronunciation, the *ta’ marbuta* was represented with an “h” at the end of a word only for the word *bughāh*. Otherwise, I omitted the *ta’ marbuta* in transliteration. In citing jurists, I have used the name that commonly identifies a particular jurist, which may or may not be a jurist’s proper last name. Furthermore, often the way to pronounce a jurist’s last name or *kunya* is somewhat of a mystery. Sometimes the printed books do not

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include the correct pronunciation either. I have investigated the proper pronunciation of the names of jurists, and reflected the results of my research in the transliteration. Without doubt, my research has not been perfect and there will be some unintended mistakes, and for that I apologize. I have also included the death dates of jurists in the main text or footnotes where I thought that identifying the era of a jurist is pertinent to the argument. At times, I repeat the date of death when reminding the reader that such a date is of particular relevance.

Over the years, I have accumulated such an enormous debt of gratitude that I fear that I will never be able to repay it. First and foremost, I thank Professor Hossein Modarressi, my thesis advisor at Princeton, mentor, and inspiration. I owe everything to him, and the value of his guidance has been immeasurable in all my work. He is truly a boundless fountain of knowledge, and I regret that this book will not reflect his level of depth and exactitude. At Princeton, I had the privilege of working with a group of inspiring scholars. I thank Professors Abraham Udovitch, Andras Hamori, Carl Brown, and Richard Falk for their feedback and valuable insights. My special thanks to Professor Michael Cook who is the living embodiment of what a true scholar and teacher should be. He is never impressed unless two-thirds of a page is taken up by learned citations. Most of the pages of this book will disappoint him, but there are few in the scholarly world that can match his learning and fortitude. My heartfelt gratitude to my colleagues at the UCLA School of Law for their support. Two years of the research and rewriting for this book was accomplished in the friendly environment of the law school. Rick Abel, Stephen Bainbridge, Stephen Gardbaum, Carole Goldberg, Steve Munzer, Randy Peerenboom, Clyde Spillenger, Richard Steinberg, and Steve Yeazell have all provided valuable feedback or advised me in the publication process. I also thank Robert Goldstein and Jon Varat for providing me with the financial support that enabled me to complete this book. My deep gratitude to the UCLA School of Law library and its personnel for their unfailingly competent assistance. The personnel in the library have promptly obtained sources for me from all over the country.

I am honored to have had the competent assistance of several truly dedicated and gifted students. Anver Emon, Hisham Mahmoud, Mairaj Syed, and Jihad Turk have gone beyond the call of duty in helping with the numerous tasks associated with producing this work. At times, their commitment to this work surpassed mine, and I pray that they will in due time be blessed with equally inspiring students of their own.

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The anonymous readers of Cambridge University Press provided very helpful comments and this work is all the better for it. The copy-editor of this volume, Mary Starkey, is the best I have worked with, and I am very grateful to her. I thank Naheed Fakoor and Cherif, my son, for helping to create a pleasant and supportive environment in which I could work. My deeply felt gratitude to Grace, my wife, for reading and editing this book, and for her selfless and unflinching support.