

Modern Discourse on the Islamic Law of Rebellion

Sadia Tabassum (Assistant Professor of Law, International Islamic University, Islamabad (sadia.tabassum@iiu.edu.pk))

ABSTRACT

Several verses of the Qur'an and Traditions of the Prophet (peace be on him) prohibit mischief and disorder and make it obligatory on Muslims to enjoin good and forbid evil. These verses are used both by government forces and rebels to justify their position. As Muslim history records several events of rebellion and civil wars in the very early stage and the Companions of the Prophet differently conducted themselves during these conflicts, the Muslim tradition shows a rich variety of approaches towards the issue of resistance and revolt against an unjust ruler. This renders the monolithic approach of Orientalists untenable as they propagated that Muslim jurists generally adopted the approach of passive obedience to usurpers. On the contrary, various modes of behavior – such as obedience to authority, passive non-compliance with the unlawful commands of the rulers, pacific efforts to bring positive change in the system and forceful removal of the unjust ruler or replacing the unjust system – are found within Muslim tradition at any given time and place.

INTRODUCTION

Despite the fact that Muslim juristic discourses show a variety of approaches to the issue of forceful removal of an unjust ruler, following Hamilton Gibb (d. 1971), the famous historian of Orientalism, most of the modern scholars—both Muslims and non-Muslims—have generally presumed that Islamic law does not recognize the right of the Muslim community to forcefully change an unjust ruler. This paper first examines the thesis forwarded by Gibb and generally accepted by modern scholars on the non-existence of the right to rebellion in the Islamic legal discourses. After this, it reviews the works of some of the leading Muslim scholars in the post-colonial world on the Islamic law of rebellion. It shows that the Muslim discourse has always shown a variety of approaches towards the issue of rebellion and authority of usurpers.

SECTION ONE: REBELLIONS IN EARLY ISLAMIC HISTORY

Muslims were politically united during the lifetime of the Prophet (peace be on him).¹ After his death, initially some disagreement arose among Muslims on the issue of his successor, but this disagreement was soon resolved and the community accepted Abu Bakr (Allah be pleased with him) as the first caliph.² Muslims remained politically united during the period of the second caliph 'Umar (Allah be pleased with him) and for a long time during the caliphate of

the third caliph ‘Uthman (Allah be pleased with him).³ Later, political opposition to ‘Uthman (Allah be pleased with him) turned into rebellion and in the year 35 AH/655 CE the rebels martyred him.⁴ This was a major turning point in Muslim history as it affected the development of Muslim theology, law and history and many different ways, almost permanently.

1.1 The Beginning and End of Civil War

‘Ali (Allah be pleased with him) was not willing to become caliph but he accepted this responsibility only to save Muslims from chaos and anarchy.⁵ Some of the provinces, particularly Syria where Mu‘awiyah (Allah be pleased with him) was governor, refused to take oath of allegiance to ‘Ali (Allah be pleased with him) unless the latter would execute those who killed ‘Uthman (Allah be pleased with him).⁶

This was the beginning of political division among Muslims which turned into theological disagreements with the passage of time. Those who supported ‘Ali (Allah be pleased with him) were called Shi‘ah, literally "supporters".⁷ Belief in the imamate of ‘Ali (Allah be pleased with him) gradually became the distinctive feature of the Shi‘ah theology and it had its impact on the right to rebellion against the rulers belonging to the Umayyad and the Abbasid clans.

‘Ali (Allah be pleased with him) had to fight wars to curb rebellion and in the year 37 AH/357 CE he was forced to conclude a compromise settlement (*tahkim*)⁸ with Mu‘awiyah (Allah be pleased with him). This compromise was severely criticized by some people who equated it with infidelity and polytheism. These people were called Khawarij (those who abandoned allegiance to the ruler) and ‘Ali (Allah be pleased with him) had to fight several wars against them.⁹ It is the conduct of ‘Ali (Allah be pleased with him) during his wars with Khawarij which the Muslim jurists consider the primary source of the Islamic law of rebellion.¹⁰

In the year 40 AH/660 CE, a Khariji fanatic martyred ‘Ali (Allah be pleased with him).¹¹ He was succeeded by his son Hasan (Allah be pleased with him) who concluded an agreement with Mu‘awiyah (Allah be pleased with him) and thereby abdicated the caliphate in his favour.¹² Thus, Muslims again became politically united.

1.2 Other Revolts during the Period of the Companions (Allah be pleased with them)

For some time the political opposition was quieted. However, serious differences arose when Mu‘awiyah (Allah be pleased with him) nominated his son Yazid as his successor.¹³ Many groups revolted against Yazid.¹⁴ His forces martyred Husayn, the son of ‘Ali (Allah be pleased with them), in Karbala’ in the year 63 AH/683 CE.¹⁵

Later, during the period of the Companions (Allah be pleased with them) several other rebellions broke out against the Umayyad rulers. The most

important of these was the rebellion of ‘Abdullah b. Zubayr (Allah be pleased with them) who claimed caliphate in the same year (61 AH/690 CE) and established his rule in Hijaz.¹⁶ One of the significant incidents in this regard was the “Incident of al-Harrah” in the year 63 AH/683 CE when the Umayyad forces brutally attacked Madina, the City of the Prophet (peace be on him), killing many Companions (Allah be pleased with them) and ravaging the City.¹⁷ After this, the Umayyad forces attacked Makkah but as Yazid suddenly died the campaign was halted.¹⁸ Later, the fifth Umayyad Caliph ‘Abd al-Malik b. Marwan (d. 86 AH/705 CE) sent troops under the command of Hajjaj b. Yusuf (d. 95 AH/714) to besiege Makkah and to kill Ibn Zubayr (Allah be pleased with him). After a long and bloody battle, finally the Umayyad forces martyred Ibn Zubayr (Allah be pleased with him) in 73 AH/692 CE.¹⁹

Some of the opponents of the Umayyads also tried to gather forces against the rulers under the leadership of ‘Ali Zayn al-‘Abidin (d. 95 AH/713 CE), the son of Husayn (Allah be pleased with them), but he refused after which they gathered around Muhammad (d. 81 AH/700 CE), a step brother of Husayn and son of ‘Ali from a maid of Banu Hanifah which was why he was called Muhammad b. al-Hanafiyah.²⁰ Although Ibn al-Hanafiyah himself did not participate in war against the Umayyads, Mukhtar b. Abi ‘Ubaydah al-Thaqafi (d. 67 AH/687 CE) gathered people claiming Muhammad as the new “imam” and succeeded in killing almost all the major characters responsible for the murder of Husayn.²¹

SECTION TWO: CONDUCT OF THE COMPANIONS (ALLAH BE PLEASED

WITH THEM) DURING REVOLTS

It is well known that all the Sunni schools of law, particularly the Hanafi School, consider the consensus of the Companions as a binding source of Islamic law.²² The Hanafis acknowledge binding character even for the conduct of a single Companion.²³ If the Companions disagree on an issue, they choose one of the opinions on the basis of compatibility with other principles of law recognized by the School.²⁴ Hence, on the issue of rebellion also the jurists consider the conduct of the Companions for deriving detailed legal rules.

2.1 Different Trends

During the civil war and later revolts, some of the Companions participated in war supporting one or the other side. For instance, many of them supported ‘Ali (Allah be pleased with him) in his wars against other Companions as well as against other rebels and Khawarij.²⁵ Some of the Companions fought against him on various pretexts though they finally abandoned war against him and reached a compromise settlement.²⁶ A third group of Companions remained aloof from all wars between the Companions.²⁷

None of the Companions supported the killing of Husayn and ‘Abdullah b. al-Zubayr and all of them deemed their killing a serious violation of the law.²⁸ However, on various grounds many of them disagreed with the strategy of Husayn and Ibn al-Zubayr against the Umayyads, while some of them supported these revolts.²⁹

Hence, the conduct of the various Companions is cited as a source, and even as binding precedent, by the jurists for substantiating their respective positions.

2.2 The Conduct of ‘Ali (Allah be pleased with him)

The Hanafijurists derive the rules rebellion and civil wars primarily from the conduct of ‘Ali (Allah be pleased with him). In both *Kitab al-Asl*³⁰ and *al-Siyar al-Saghir*,³¹ Shaybani begins the Section on Rebels (*Babal-Khawarij*) with several precedents of ‘Ali (Allah be pleased with him). Explaining the reason for this, Sarakhsi says:

In this chapter, ‘Ali (Allah be pleased with him) is the imam. He fought [the rebels] and declared that he was ordered [by the Prophet] to do so. Thus, he said: ‘I have been ordered to fight those who abandon obedience [to the ruler], who broke their oath [of allegiance] and who are unjust.’³²

The first precedent Shaybani mentions is reported by Kathir al-Hadrami who saw some Khawarij in the Grand Mosque of Kufah some of whom were abusing ‘Ali (Allah be pleased with him) and one of them swore to kill him. Hadrami captured that one, while the rest of them ran away. He brought him to ‘Ali and reported what he had observed there. ‘Ali asked the accused about his name and then ordered his release. Hadrami was astonished this and he asked ‘Ali as to why he released a person who wanted to kill him. ‘Ali replied: "Should I kill the one who did not kill me?"³³ The second precedent quoted by Shaybani is regarding the ‘Ali’s treatment of those Khawarij who were raising slogans in the Grand Mosque against him during his Friday *Khutbah*. ‘Ali said to them:

We shall never prohibit you from entering the mosques of Allah to mention Allah’s name there; we shall never deny you [your share] in the *fay*,³⁴ so long as you join hands with us; and we shall never fight you until you attack us.³⁵

From these precedents, the *fuqaha*’ derive a fundamental general rule of the Islamic law of *baghy* that a person accused of rebellion cannot be punished for rebellion unless he actually commits an act of rebellion.³⁶ These precedents also show that if the rebels support the government during its war against foreign invasion, they will be given the same rights and privileges as other Muslims are given.³⁷ Furthermore, these precedents establish the rule that the purpose of war against rebels is to curb rebellion, and not to exterminate rebels.³⁸

Another rule derived from the conduct of ‘Ali (Allah be pleased with him) is

that the ruler must exhaust the peaceful means first and that he should use force only as a last resort. Sarakhsi says:

It is reported that ‘Ali (Allah be pleased with him) sent Ibn ‘Abbas (Allah be pleased with him) to the people of Harura’ and he negotiated with them and asked them to repent. This is better because the purpose may be achieved without war through advice and warning. Hence, it is better to negotiate before war because poison is the last of the medicines.³⁹

The famous Shafi‘i jurist Abu Ishaq al-Shirazi further elaborates this rule in the following words:

The ruler should not initiate war unless he asks them [the rebels] about their grievance. If they mention an unjust decision, he should change that decision. If they refer to a problem that can be solved without war, he should solve it. And if they challenge the legitimacy of the ruler, he should answer their arguments. All these are the corollaries of the obligation of making peace and Allah says: ‘make peace between them [the warring faction].’⁴⁰

These and other precedents of ‘Ali (Allah be pleased with him) helped the *fuqaha*’ develop the detailed rules of the Islamic law of rebellion.

SECTION THREE: ORIENTALISTS ON ISLAMIC LAW OF REBELLION

Modern scholars have generally denied the existence of the right to rebellion in Islamic law.⁴¹ Hamilton Gibb, the foremost proponent of this theory, interprets the development of the Muslim juridical discourse on rebellion in the light of the historical factors.

3.1 Gibb’s Thesis

The main points of his theory are summarized below:

1. Initially Muslim jurists laid down very strict conditions for the position of caliph and they envisaged a single *imam* (ruler) for the Muslim community who could be removed by the community if he became unjust.⁴²
2. Later, Muslim jurists were compelled by the Khawarij’s anarchist revolts to deny the right to rebel against an unjust ruler.⁴³
3. By the fifth/eleventh century, when the Buwayhids⁴⁴ and the Fatimids⁴⁵ had gained ascendancy to power, the Shafi‘i jurists Abu ‘l-Hasan al-Mawardi (d. 450/1058), in order to defend the Abbasid caliphate, recognized the legitimacy of the authority of the usurpers in the provinces on the condition that they pledged allegiance to the caliph.⁴⁶ Thus, he made obedience to usurpers a moral and legal

obligation.⁴⁷

4. By the time of the Shafi'i jurist al-Ghazali (d. 505/1111), the Saljuq⁴⁸ power was established in Baghdad and Ghazali had to reconcile the temporal powers of the Saljuqsultans to the religious authority of the caliph.⁴⁹
5. The Shafi'i jurist of the eighth/fourteenth century, Ibn Jama'ah (d. 733/1332), who worked as a judge under the Mamluks⁵⁰ when the Mongols had already destroyed the Abbasid caliphate, equated power with legality.⁵¹

This thesis has generally been accepted by modern scholars,⁵² although some of them have tried to modify it slightly.

3.2 The Modified Version of the Thesis

Hanna Mikhail asserts that while Muslim jurists felt compelled to accept the political reality, they persistently declared that the ruler must fulfill the requirements of justice and religion.⁵³ Mikhail agrees with Gibb in declaring that with the passage of time Muslim jurists started preaching quietism and prohibiting rebellion.⁵⁴ He, however, points out that Abu Hayyan al-Andalusi (d. 754/1353) in the eighth/fourteenth century argued in favor of use of force against unjust ruler, but Mikhail considers it an exception calling Abu Hayyan "a voice in the wilderness".⁵⁵

The main flaw in this thesis is that it ignores the classical manuals of *fiqh*. Muslim jurists, particularly the Hanafis, developed a detailed law of rebellion as early as the second/eighth century. Thus, *Kitab al-Asl* of Muhammad b. al-Hasan al-Shaybani (d. 189/805), a great jurist of all time who compiled the six basic text of the Hanafi School, contains a chapter on *Siyar* or the law of war.⁵⁶ This chapter contains detailed exposition of the law of rebellion in a separate section under the title of *Bab al-Khawarij*.⁵⁷ The same is true of Shaybani's other book *al-Siyar al-Saghir*, which contains a precise summary of the position of the Hanafi School on the issues relating to war.⁵⁸ Muhammad b. Idris al-Shafi'i (d. 204/), the founder of the Shafi'i School and a student of Shaybani, devoted a separate chapter to the law of rebellion in his *magnum opus* titled *al-Kitab al-Umm*.⁵⁹

Ignoring these basic sources of Islamic law and relying heavily on secondary sources have led scholars to speculations and wrong conclusions. For instance, accusing Mawardi of legalizing the rule of usurpers in the fifth/eleventh century ignores not only the *legal* distinction between *de facto* and *de jure* authority, but also overlooks the historical fact that Muslim jurists have always accepted some legal consequences of the *de facto* authority of usurpers even when they simultaneously denied legitimacy to their rule. Moreover, Mawardi himself mentions the same conditions and pre-requisites for the ruler which the earlier jurists had laid down.⁶⁰ The same is true of Ghazali.⁶¹ Hence, the view of Bernard Lewis is more convincing as he asserts that the two approaches of

passive obedience to rulers and rebellion against unjust rulers existed simultaneously throughout early Islamic history.⁶²

3.3 Ignoring the Legal Texts

Another serious flaw in this thesis is that it ignores the work of those jurists who advocated the right of rebellion against unjust rulers. For instance, Abu Bakr al-Jassas (d. 370/981), the famous Hanafi jurist of the fourth/tenth century, linked the right to rebellion against unjust ruler to the religious and legal obligations of enjoining right and forbidding wrong (*al-amr bi 'l-ma'ruf wa 'l-nahy 'an al-munkar*) and severely criticized those who preached passive obedience to unjust rulers.⁶³ It is important to note that Jassas does not call it his personal opinion. Rather, he cites it as the legal position of Abu Hanifah, the founder of the Hanafi School.⁶⁴ The same is the opinion of Burhan al-Din al-Marghinani (d. 593/1197), author of the famous Hanafi manual *al-Hidayah*,⁶⁵ as well as the later Hanafi jurists.⁶⁶ Thus, to consider Abu Hayyan as “a voice in the wilderness” is not correct.⁶⁷

Importantly, Gibb, Mikhail and other scholars also did not use the “proper” legal sources.⁶⁸

SECTION FOUR: WORKS OF THE MODERN MUSLIM SCHOLARS

In the aftermath of the First World War (1914-1918 CE), the Muslim world saw the demise of the Caliphate and almost the whole of the Muslim world was dominated by the colonial powers. Many Muslim scholars worked on the need of a world caliphate as well as of the permissibility or prohibition of multiple Muslim states. After the Second World War (1939-1945 CE), when many Muslim territories gained independence, some of the renowned Muslim scholars worked on Islamic political thought generally as well as on the Islamic doctrine of jihad and in that context they also worked on the Islamic law regarding rebellion and civil wars. Thus, a rich literature on the issue has come into existence. Some of the significant works in this regard are examined here.

Fazlur Rahman also accepts this theory and emphatically asserts that Islam does not have law of rebellion. He is of the view that initially some “activist tendencies” might have existed but later on these became extinct due to the quietist doctrine of the Murji’ah and the Muslim jurists persistently prohibited any rebellion against the rulers.⁶⁹

4.1 Azad on the Necessity of Caliphate

During World War I, when it became clear to the Indian Muslims that the British Empire and her allies wanted to abolish the caliphate after the end of the war, they started a movement for saving the caliphate despite the fact that India never remained part of the Ottoman Empire. It was in the context of the “Khilafat Movement” that Abu 'l-Kalam Azad (d. 1958), the renowned scholar

and politician of India, wrote the famous book titled *Mas'ala-e-Khilafat*.⁷⁰ In this book, Azad tries to prove that establishing a caliphate is a religious obligation of Muslims and that it was a sin for Muslims to live without a caliph.⁷¹ He further tries to prove that Islamic law does not allow Muslims to have more rulers than one.⁷² In this context, he accumulates arguments against the legitimacy of rebellion and also tries to prove that Husayn b. 'Ali (Allah be pleased with them), the grandson of the Prophet (peace be on him), did not intend to rebel against a caliph.⁷³ In his opinion, when Husayn went out toward Kufah, the caliphate of Yazid was not yet established and that when he came to know about the establishment of the Yazid's caliphate he intended to withdraw but the force of the events compelled him to fight for saving his life and that of his companions.⁷⁴

4.2 Mawdudi on the Need to Eradicate Mischief and Disorder

In his monumental work *al-Jihad fi 'l-Islam*, Mawlana Abu 'l-A'la Mawdudi (d. 1979), a great Muslim reformer of the twentieth century, divides jihad into two broad categories: defensive (*mudafi'annah*) and reformative (*muslihanah*).⁷⁵ He asserts that the reformative jihad is waged for the purpose of combating persecution (*fitnah*) and disorder (*fasad*).⁷⁶ Then, he explains the situations that fall either in *fitnah* or *fasad*.⁷⁷ He says that literally *fasad* denotes anything in excess and thus it signifies every unjust or evil act.⁷⁸ However, asserts Mawdudi, Qur'an generally applies this term on mischief and disorder at the community level.⁷⁹ In this regard, he identifies as many as eleven different instances of the Qur'anic usage of the term *fasad*. These include, *inter alia*, policy of racism and "ethnic cleansing" adopted and enforced by Pharaoh against the Israelites;⁸⁰ imperialistic policies of the ancient Arab tribe of 'Ad;⁸¹ support to tyrannical regimes as the ancient Arab tribe of Thamud provided to its tyrant rulers;⁸² humiliating the respectable people of the conquered territories by the conquerors;⁸³ and wanton destruction at the hands of the rulers.⁸⁴

This, indeed, is a very good explanation of the Qur'anic usage of the term *fasad*. It may, however, be noted here that Mawdudi does not include in this list some other instances of *fasad* mentioned in the Qur'an. Most important of these usages are:

1. The offence of *hirabah* which the Qur'an has explicitly declared as *fasad*;⁸⁵
2. *Fasad* as one of the causes for the death punishment;⁸⁶ and
3. Most importantly, Mawdudi does not mention rebellion here.

It is worth noting that Mawdudi includes the law enforcing action against the criminals and the war against rebels within the scope of defensive jihad.⁸⁷ Hence, in this work, surprisingly for many people, Mawdudi does not discuss the question of legality or illegality of rebellion against an unjust ruler.

4.3 Mawdudi on the Right to Remove an Unjust Ruler

It was in a separate series of articles initially published in Monthly “Tarjumanal-Qur’an”, of which Mawdudi was the editor, and later compiled in a book titled *Tafhimat* that Mawdudi specifically dealt with the issue of legality of rebellion against an unjust ruler. In one of his articles titled “Mas’ala-e-KhilafatmaynImamAbu Hanifah ka Maslak [The Legal Position of ImamAbu Hanifah on the Issue of Caliphate]”, Mawdudi accumulates a heap of evidence to prove that Abu Hanifah upheld the right of the community to remove an unjust rule by force, if necessary, provided the resultant *fasad* (mischief) is lesser than the continued *fasad* of the ruler.⁸⁸ In this regard, he primarily relies on the exposition of the great Hanafi jurist Abu Bakr al-Jassas al-Razi. When some of his critics objected to this and quoted some passages from another great Hanafi jurist Abu Bakr Muhammad b. AbiSahl al-Sarakhsi which apparently suggested that the Hanafi School did not allow rebellion, Mawdudi replied in another detailed article titled “KhurujkayBaraymaynImamAbu Hanifah ka Maslak [The Legal Position of ImamAbu Hanifah on the Issue of Rebellion]”.⁸⁹ In this article, he took the position that Abu Hanifah’s position was different from what later became the official position of the Hanafi School. This is a very important issue and needs separate detailed analysis.⁹⁰

4.4 Hamidullah on the Conduct of Hostilities in Internal Wars

Muhammad Hamidullah (d. 2002), a contemporary of Mawdudi and among the pioneers in the field of Muslim international law in the twentieth century, came up with an analysis of the actual conduct of hostilities during rebellion and civil wars in his monumental work *The Muslim Conduct of State*.⁹¹ Hamidullah divided this work into four major parts: introduction, peace, hostility and neutrality. The introductory part contains eleven chapters; discussion on peaceful relations are covered in six chapters; the third part devoted to hostile relations is the longest part as it contains twenty-six chapters; and the final part on neutrality has five chapters. The discussion on “lawful wars” is found in the third part of the book on hostile relations. Here, he divides lawful wars into five kinds: defensive wars, continuation of previous hostilities, sympathetic wars, punitive wars and idealistic wars. For our purpose, the most important of these categories is that of “punitive wars”. He gives this title to those wars which were fought “against hypocrites, apostates, rebels and those who refuse to pay *zakah* as well as those who committed a breach of the treaty of peace.”⁹² In other words, he looks at the issue of rebellion from the perspective of the state and allows it to take “punitive action” against the rebels. He does not elaborate if there is a situation in which Islamic law allows rebellion against an unjust rule. He, however, gives interesting details of the rules about actual conduct of hostilities during rebellion and civil wars.

4.5 Faraj on the Duty to Remove the Usurpers

A very important booklet on the issue, *al-Faridah al-Gha'ibah* (the Neglected Duty),⁹³ of removal of an unjust ruler appeared in 1981 written by Muhammad 'Abd al-Salam Faraj, one of the assassins of the Egyptian President Anwar al-Sadat. The book summarizes the arguments of those who consider it obligatory to take up arms against an unjust ruler. It is a very powerful work and has influenced the militants across the Muslim world.⁹⁴ Relying on the fatwa of Imam IbnTaymiyyah against some Mongol rulers of his time, Faraj argues that the same fatwa is applicable *a fortiori* on the corrupt rulers who claim to be Muslims.⁹⁵

Faraj stresses that Muslims have neglected this duty and it has caused many problems for them.⁹⁶ He forcefully asserts: "Any group of people that rebels against any single precept of the clear and established judgments of Islam must be fought... even if the members of the group pronounce the Islamic Confession of Faith."⁹⁷ He clearly ascribes apostasy to these rulers: "The Rulers of this age are in apostasy from Islam... They carry nothing from Islam but their names."⁹⁸ His conclusion is: "To obey such a person is no longer obligatory, and the Muslims have the duty to revolt against him and depose him, to put a just leader in his place when they are able to do so."⁹⁹

Basic problem with this thesis is that it is based on the approach of direct access to the texts of the Qur'an and the Sunnah and ignoring the detailed expositions of the jurists. Some of the works of the jurists are taken randomly and used arbitrarily. This simplistic approach has many serious flaws which needs separate analysis.

4.6 Qaradawi's Critique of the Legal Justification for Rebellion

Sheikh Yusuf al-Qaradawi (b. 1926), one of the most influential contemporary scholars of Islamic law and jurisprudence, recently came up with his *magnum opus* on the Islamic law of armed conflict entitled *Fiqh al-Jihad: Dirasah Muqarinah li-Ahkamih wa Falsafatih fi Daw' al-Qur'an wa 'l-Sunnah*.¹⁰⁰ In this work he devotes a chapter to the "Fiqh of the Violent Groups".¹⁰¹ After analyzing the various aspects of the legal position of these groups, Qaradawi summarizes a list of their arguments:

1. These rulers have become apostates;¹⁰²
2. According to the fatwa of IbnTaymiyyah it is obligatory to take up arms against such rulers;¹⁰³
3. These rulers have been installed by non-Muslim powers to serve their interests;¹⁰⁴
4. These rulers come up with laws against the Divine law;¹⁰⁵
5. Non-Muslims living in Muslim territories have terminated the contract of *dhimmah*;¹⁰⁶
6. Non-Muslim tourists are not protected because their states have waged war against Muslims.¹⁰⁷

Qaradawi then explains the flaws in this legal position and highlights the following significant aspects in this regard:

1. Misunderstanding the Islamic law about jihad and relations with non-Muslims;¹⁰⁸
2. Misunderstanding the principles of Islamic law about relations with the people who concluded the contract of *dhimmah* with Muslims;¹⁰⁹
3. Misapplying the doctrine of preventing evil and promoting good;¹¹⁰
4. Ignoring the conditions for permissibility of revolt against the ruler;¹¹¹ and
5. Violating the principles of Islamic law for ascribing apostasy to Muslims.¹¹²

These points are very important and each one of them needs a separate analysis but that is beyond the scope of the present paper.

4.7 Khaled Abou El Fadl on Irregular Warfare and Islamic Law

Khaled Abou El Fadl (b. 1963), a renowned contemporary scholar, in his *Rebellion and Violence in Islamic Law* has undertaken an in-depth and thorough study of rebellion and other related forms of violence in the Islamic legal discourses. He is not convinced by this thesis and observes that “this view has resulted in certain conclusions about the right to rebellion and the treatment of rebels in Islamic jurisprudence, which are largely inaccurate.”¹¹³ He stresses upon the need to conduct a thorough examination of the *ahkam al-bughah* (legal rules about rebels) in the manuals of Islamic law (*fiqh*).¹¹⁴ This is a very important contribution to the study of the right to rebellion in Islamic law and it has far reaching implications. This has led Abou El Fadl to some startling conclusions. Yet there are some serious problems in his methodology and thesis.

Firstly, while Abou El Fadl took pains to explain “the doctrinal foundations of the laws of rebellion”,¹¹⁵ he mostly concentrated on four verses of the Qur’an, namely, the two “*baghy* verses” (Qur’an, 49:9-10)¹¹⁶ and the two “*hirabah* verses” (Qur’an, 5:33-34).¹¹⁷ He did not relate the issue of rebellion to the verses, which lay down the religious and legal duty of enjoining right and forbidding wrong. This seems really surprising because in Muslim history the discourse on rebellion, more often than not, revolved around this important duty and that is why, as shown earlier, the Hanafi jurists particularly discuss the issue of rebellion against unjust ruler under the doctrine of enjoining right and forbidding wrong.¹¹⁸ Abou El Fadl himself acknowledges this fact.¹¹⁹ He also commented upon the traditions which emphasize the duty of enjoining right and forbidding wrong.¹²⁰ However, he proposes that “these verses and the reports surrounding them require a separate study.”¹²¹

Secondly, he seems to be over-skeptical about the *Sunnah* of the Prophet as an authentic source of law even though he does not accept the theory of Joseph

Schacht regarding the fabrication of the *ahadith* by the later generations.¹²² However, he does seem influenced by some of the components of Schacht's theory when he says: "It is certainly true that jurists are painfully dependent on precedent and authority. However, while they may reorganize, and *selectively* emphasize and de-emphasize certain precedents over others, they do not *usually* invent them."¹²³

As this passage shows, he does believe that Muslim jurists sometimes, though not usually, invented precedents.¹²⁴ It is, perhaps, this over-skepticism regarding traditions which led him to declare that there are two sources of the Islamic law of rebellion: the conduct of 'Ali b. Abi Talib (Allah be pleased with him) and the Qur'an.¹²⁵ He does not cite the *Sunnah* of the Prophet (peace be on him) as a source of law. Of course, this position is not acceptable to Muslim jurists.

Moreover, the idea that Muslim jurists *selectively* emphasized or de-emphasized precedents is also misleading because it suggests that they did this on subjective basis. The fact is that the various schools of Islamic law had developed various principles for preferring one precedent to the other and for reconciling between apparently conflicting precedents. The Hanafi School in particular developed a coherent theory of general principles of law. Unfortunately, scholars have paid very little attention to the methodology of the jurists before Shafi'i.¹²⁶

Thirdly, the same over-skepticism mars his treatment of the manuals of *fiqh*. Thus, he is not sure if Shaybani indeed wrote the chapter on *Siyar* in *Kitabal-Asl*.¹²⁷ For this, he relied heavily on the work of Majid Khadduri.¹²⁸

Fourthly, from the perspective of the present paper, the work of Khaled Abou El Fadl has another shortcoming, namely, that it does not examine the issues of rebellion from the perspective of the contemporary international legal regime.

4.8 Muhammad Mushtaq Ahmad on the Islamic Law of Rebellion

Muhammad Mushtaq Ahmad (b. 1976), a renowned Pakistani scholar, in his *Jihad, Muzahamat awr Baghawat Islami Shari'at awr Bayn al-Aqwami Qanun ki Roshni men* first gives details of the legality of rebellion in the works of the classical jurists and then analyzes some significant issues about the conduct of hostilities during rebellion.¹²⁹ He also analyzes these issues from the perspective of international law.¹³⁰ This work has been very helpful in understanding the legal questions about rebellion and the way the Muslim jurists and the contemporary experts of international law consider these issues. However, this does not examine the views of the Orientalists about the Islamic law of rebellion. Moreover, as it focuses on legal issues, it also does not analyze the historical context of the works of the Muslim jurists.

CONCLUSIONS

This brief analysis of some of the significant works of the Muslim scholars of

the twentieth century clearly shows the rich variety of approaches towards the issue of resistance and revolt against an unjust ruler and it establishes the point that the thesis generally accepted by Orientalists that Muslims generally preached passive obedience to tyrants and usurpers is based on wrong assumptions. Obedience to authority, passive non-compliance with the unlawful commands of the rulers, pacific efforts to bring positive change in the system and forceful removal of the unjust ruler or replacing the unjust system – all these various modes of behavior are found with a variety of shades. Hence, the monolithic approach of Orientalists is not tenable.

This variety of approach is found not only in the earliest stages of Islamic history when Muslims had to see civil war and then a series of rebellions and revolutions, but also in the twentieth century when Muslims were facing colonial regimes and even in the twenty-first century when Muslims face new forms of imperialism and the voices of resurgent Islam are getting louder.

References

- 1 By this we mean that Muslims had only one state under the political authority of the Prophet (peace be on him). This, however, does not detract from the fact that a number of Muslims lived in territories that did not form part of the abode of Islam.
- 2 Muhammad Ibn Sa'd al-Zuhri, *Kitab al-Tabaqat al-Kabir* (Cairo: Maktabatal-Khanji, 2001), 3:166-68; Abu Ja'far Muhammad Ibn Jarir al-Tabari, *Tarikh al-Umam wa al-Muluk*, ed. Muhammad Abu 'l-Fadl Ibrahim (Cairo: Dar al-Ma'arif, 1382/1962), 3:203-23.
- 3 Abu 'l-Fida' 'Imad al-Din Ibn Kathir, *al-Bidayah wa 'l-Nihayah* (Cairo: al-Matba'ah al-Maymaniyyah, 1910), 7:168.
- 4 Ibn Kathir, *al-Bidayah wa 'l-Nihayah*, 7:188.
- 5 *Ta'rikh al-Tabari*, 5:152.
- 6 Ibn Kathir, *al-Bidayah wa 'l-Nihayah*, 7:230.
- 7 Abu Zahrah, *al-Madhahib al-Islamiyyah*, 21-24. See for a different view, S. H. M. Ja'fari, *The Origins and Early Development of Shi'a Islam* (Karachi: Oxford University Press, 2000).
- 8 Ibn Kathir, *al-Bidayah wa 'l-Nihayah*, 7:273. Although the word *tahkim* is generally translated as "arbitration", I prefer translating it here as "compromise settlement". The arbitrators need not settle a dispute through ascertaining the legal rights of the parties; instead, they may ask the parties to relinquish part of

their legal rights in order to have a peaceful solution. The more famous, though unauthentic, reports about *tahkim* after the battle of Siffin suggest that the arbitrators were to decide whether 'Ali or Mu'awiyah was entitled to caliphate. But the authentic reports, though less famous, suggest that the arbitrators found peaceful solution because they asked Mu'awiyah not to pursue his demand of *qisas* and asked 'Ali not to demand oath of allegiance. (Abu Bakr Ibn al-'Arabi, *al-'Awasim min al-Qawasim fi Tahqiq Mawaqif al-Sahabah ba'd Wafat al-Nabiyy* (Cairo: Maktabatal-Turathal-Islami, 1998), 174-76). A few skirmishes took place between the two sides in the far off areas after which they concluded another peace settlement in the year 40 AH. In this treaty, the parties agreed on non-intervention in each other's territory. No war took place between 'Ali and Mu'awiyah after this. (Ibn Kathir, *al-Bidayah wa 'l-Nihayah*, 7:322) Thus, *tahkim* in essence was a compromise.

9 See for an analysis of the influence of the political disagreements on the development of the Kharijite doctrines: Abu Zahrah, *al-Madhahib al-Islamiyyah*, 61-65.

10 See Section 2.2.2 below.

11 Ibn Kathir, *al-Bidayah wa 'l-Nihayah*, 7:326.

12 Ibid., 8:21

13 Ibid., 8:228

14 Ibid., 8:251

15 Ibid., 2:64-65. Later, many descendants of 'Ali, mostly through Hasan and Husayn (Allah be pleased with them), revolted against the Umayyad and the Abbasid rulers. Notable among them are: Zayd b. 'Ali, the grandson of Husayn who rebelled against the Umayyad ruler Hisham and Nafs Zakiyyah, the great-grandson of Hasan who rebelled against the Abbasid caliph Mansur. It is historically established that Abu Hanifah supported both these rebellions.

16 *Tarikh al-Tabari*, 5:494.

17 Ibid., 485-93.

18 Ibid., 499.

19 Ibid., 6:186-93.

20 Ibid., 6:5-38.

21 Ibid., 6:38-66.

- 22 Abu Bakr Muhammad b. Abi Sahl al-Sarakhsi, *Tamhid al-Fusul fi 'l-Usul (Usul al-Sarakhsi)* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1414/1993), 1:318-19.
- 23 Ibid., 2:105-17.
- 24 Ibid.
- 25 For example, the famous Companions 'Ammar b. Yasir and Abu Musa al-Ash'ari (Allah be pleased with them) were active supporters of 'Ali (Allah be pleased with him).
- 26 For example many Companions fought against 'Ali (Allah be pleased with him) under the leadership of 'A'ishah (Allah be pleased with her) in the famous Battle of the Camel but latter submitted to his rule.
- 27 The most famous among them was 'Abdullah b. 'Umar (Allah be pleased with them).
- 28 See for detailed reports about these events: *Tarikh al-Tabari*, 5:400-67, 551-63, 6:187-93.
- 29 Some of the Companions who in 64 AH/684 CE started movement for retaliation of the murder of Husayn were led by Sulayman b. Surad al-Khuza'i (Allah be pleased with him) who was among the staunch supporters of 'Ali (Allah be pleased with him). See for details of this movement: Ibid., 6:551-63. The Companions followed similar trends at the time of the incident of Harrah and the rising of Mukhtar. See for a detailed analysis of the historical data about the position of the Companions during civil wars: Muhammad Mahzun, *Tahqiq Mawaqif al-Sahabah fi 'l-Fitnah min Riwayat al-Imam al-Tabari wa 'l-Muhaddithin* (Cairo: Dar al-Salam, 1428/2007).
- 30 Khadduri, *The Islamic Law of Nations*, 230-232.
- 31 Mahmood Ahmad Ghazi, *Shorter Book on Muslim International Law* (Islamabad: Islamic Research Institute, 1998). 75-81.
- 32 Sarakhsi, *al-Mabsut*, 10:132.
- 33 Ibid., 10:133. See for a detailed discussion on this and other precedents of 'Ali (Allah be pleased with him): Muhammad Mushtaq Ahmad, *Jihad, Muzahamat awr Baghawat Islami Shari'at awr Bayn al-Aqwami Qanun ki Roshni men* (Lahore: Kitab Mahal, 2016), 684-691.
- 34 *Fay'* is the term for the goods captured from the opponents

without using force against them, such as the tribute they pay after concluding a peace treaty with Muslims. It is distinguished from *ghanimah* in that the latter is the term used for the goods captured in a military campaign and. Moreover, moveable property is generally included in *ghanimah* while immovable property is included in *fay'*. The rule for *fay'* is that it will go to the *bayt al-mal* and will be used for the benefit of all Muslims (Qur'an 59:7) within *dar al-Islam*. As for *ghanimah*, the rule is that one-fifth of it will go to the *bayt al-mal* while the rest will be distributed among the *mujahidin* (Qur'an 8:41). Muhammad Rawwas Qal'aji, *Mu'jam Lughat al-Fuqaha'* (Karachi: Idaratal-Qur'an, n.d.), 335 and 351.

35 Sarakhsi, *al-Mabsut*, 10:133.

36 Ibid. Sarakhsi further explains that if the ruler has credible information that some people are planning rebellion, he can take pre-emptive measures and can imprison them till the situation is controlled. Ibid.

37 Ibid., 10:133-134.

38 Sarakhsi says: "this precedent proves that the purpose of fight against rebels is to repel their attack." (Ibid., 10:134).

39 Ibid., 136.

40 Shirazi, *al-Muhadhdhab*, 3:400-401. The reference is to the verse of the Qur'an, 49:10.

41 See, for instance, H. A. R. Gibb, "Constitutional Organization" in Majid Khadduri and Herbert J. Liebesny (eds.), *Origin and Development of Islamic Law* (Washington DC: Middle East Institute, 1955), 1-15. Khaled Abou El Fadl, a contemporary scholar and authority on the Islamic law of rebellion, summarizes "the most basic formulation" of the accepted thesis in the following words: "Muslim jurists moved from the absolute realm of political idealism to an absolute realm of political realism." *Rebellion and Violence*, 8.

42 Gibb, "Constitutional Organization", 6-14.

43 Ibid., 15.

44 Buwayhids, or *Al Buwayh*, belonged to a Persian Shi'ah tribal federation whose conquest of Persia and capture of Baghdad in 333AH/945 CE ended the Abbasid caliphate's political power. Although the Abbasids retained the office of caliph, real power

henceforth lay with chief emirs, the first of whom was Ahmad b. Buwayh.

45 The Fatimids, or *al-Fatimiyyun*, were the Isma'ili Shi'ah who established their caliphate in Egypt and ruled from 296 AH/909 CE to 566 AH/1171 CE. The caliphate was based originally in the Tunisian city of "Mahdiyyah", before establishing the Egyptian city of Cairo in 358 AH/969 CE, which thereafter became their capital.

46 Gibb, "Constitutional Organization", 18-19. Gibb has written a detailed analysis of al-Mawardi's political thought in "al-Mawardi's Theory of the Caliphate", *Islamic Culture II* (1937), 291-302. See also: Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1973), 101-102.

47 Gibb, "Constitutional Organization", 15.

48 The Saljuq were a Turco-Persian Sunni Muslim dynasty that ruled parts of Central Asia and the Middle East from the 11th to 14th centuries.

49 Gibb, "Constitutional Organization", 19. Ann Lambton argues that Ghazali was more concerned with the threat of internal strife (*fitnah*) than the external invasion of the Crusaders. (Ann K. S. Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists* (Oxford: Oxford University Press, 1981), 109).

50 The Mamluk Sultanate was a regime composed of Mamluks who ruled Egypt and Syria from the mid-thirteenth to the early sixteenth century.

51 Gibb, "Constitutional Organization", 23. Gibb assumes that IbnJama'ah abandoned law in favor of secular absolutism.

52 FazlurRahman, "The Law of Rebellion in Islam" in Jill Raitt (ed.), *Islam in the Modern World: 1983 Pain Lectures in Religion* (Columbia, MO: University of Missouri-Columbia, n. d.). Lambton further extends this theory by asserting that neither the Shi'i nor the Sunni jurists discussed rebellion in detail. (*State and Government in Medieval Islam*, 263). This is a strange assertion because even in the second/eighth century Muslim jurists had developed a detailed law of rebellion. See for details: Sadia Tabassum, "Recognition of the Right to Rebellion in Islamic Law with Special Reference to the Hanafi Jurisprudence", *Hamdard Islamicus*, 34:4 (2011), 55-91.

- 53 Hanna Mikhail, *Politics and Revelation: Mawardi and After*,
(Edinburgh: Edinburgh University Press, 1985), 28.
- 54 Ibid., 38.
- 55 Ibid., 50.
- 56 Khadduri and Abou El Fadl have raised doubts on Shaybani's
authorship of *Siyar of Kitabal-Asl*. This, however, is not
acceptable. See below for criticism on their view.
- 57 Khadduri, *The Islamic Law of Nations*, 230-253.
- 58 Ghazi, *The Shorter Book on Muslim International Law*, 75-81. The
same is true of other manuals of the Hanafi School.
- 59 This encyclopedic work of Shafi'i contains several chapters
relating to *siyar*, and one of these chapters is *Kitab Qital Ahl al-
Baghy wa Ahl al-Riddah*. (Muhammad b. Idris al-Shafi'i, *al-Kitab
al-Umm*, ed. Dr. Ahmad Badr al-Din Hassun (Beirut:
DarQutaybah, 2003), 5:179-242). The later Shafi'i jurists followed
this practice. Thus, *al-Muhadhdhab* of Abu Ishaq Ibrahim b. 'Ali
al-Shirazi also contains a separate chapter on *baghy* entitled *Kitab
Qital Ahl al-Baghy*. (Abu Ishaq Ibrahim b.'Ali al-Shirazi, *al-
Muhadhdhab fi Fiqh al-Imam al-Shafi'i* (Beirut: Dar al-Ma'rifah,
2003), 3:400-423).
- 60 Mawardi, *al-Ahkam al-Sultaniyyah*, 5.
- 61 I have examined this issue in a separate article: "The *jus ad bellum*
of Rebellion and Islamic Theology: Views of the Hanafi and the
Shafi'i Scholars" (forthcoming).
- 62 Bernard Lewis, *The Political Language of Islam* (Karachi: Oxford
University Press, 1987), 92. However, Lewis also declares that
later Muslim jurists preached obedience to rulers, be just or
unjust (Ibid., 100), and finally they accepted doctrine of passive
obedience. *Islam in History: Ideas, People and Events in the Middle
East* (Chicago: Open Court, 1993), 314.
- 63 Jassas, *Ahkamal-Qur'an*, 1:99-101.
- 64 Ibid.
- 65 Marghinani, *al-Hidayah*, 3:101.
- 66 'Ala' al-Din b. Ahmad al-Haskafi (d. 1088/1677), a renowned
Hanafi jurist of the later times, asserts that when a just
government official becomes unjust, his removal becomes
obligatory. Muhammad Amin Ibn 'Abidin al-Shami
(d.1252/1836) explicitly states that this has been the established

opinion of the Hanafi School. Jassas also asserts that the same is the rule for the caliph because the Hanafi School does not distinguish between the legal position of the caliph and that of the government officials. (*Ahkamal-Qur'an*, 1:99). See for more details: Ahmad, *Jihad, Muzahamat awr Baghawat*, 657-668.

67 It is also worth noting that the thesis ignores the rich variety of juristic opinions in Islamic law and primarily relies on the views of the jurists of only one school (Mawardi, Ghazali and IbnJama'ah all belonged to the Shafi'i School). Abou El Fadl also highlights that Mikhail did not distinguish between theological and legal works. *Rebellion and Violence*, 13.

68 Ann Lambton (d. 2008), the famous British historian, divides the literature on Islamic polity into three categories: "the theory of the jurists, the theory of the philosophers and the literary theory." *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists* (Oxford: Oxford University Press, 1981), xvi.

69 Fazlur Rahman, "The Law of Rebellion in Islam" in Jill Raitt (ed.), *Islam in the Modern World: 1983 Pain Lectures in Religion* (Columbia, MO: University of Missouri-Columbia, n. d.).

70 The book was first published in 1919 and numerous reprints have been published since then.

71 Abu al-Kalam Azad, *Mas'ala-i-Khilafat* (Lahore: Maktaba-i-Jamal, 2006), 19-69.

72 Ibid., 70-97.

73 Ibid., 98-99.

74 Ibid., 99. Azad is of the opinion that there were two stages in the struggle of Husayn (Allah be pleased with him). When he went out of Madinah, the caliphate of Yazid had not established and many important cities had not yet taken the oath of allegiance to him. However, when Husayn (Allah be pleased with him) reached near Kufah, it became apparent to him that the people thereof had bowed to the rule of Yazid. At that point, he decided to return to Madinah, but the government forces encircled him and forced him to fight till he was martyred. "At the battlefield of Karbala', Husayn was not an aspirant of *khilafah* and he was not fighting for this purpose. Rather, his position was that of saintly and innocent person whom the government forces wanted to arrest without a legal ground. He resisted his arrest

- and wanted to set an example of the patience and forbearance of the truth in front of the powerful and forces of tyranny.”
- 75 Abu 'l-A'la Mawdudi, *al-Jihad fi 'l-Islam* (Lahore: Idarah Tarjuman al-Quran, 1974), 53, 85.
- 76 Ibid., 104-105.
- 77 Ibid., 105-117.
- 78 Ibid., 109.
- 79 Ibid.
- 80 In this regard, Mawdudi refers to the following verses of the Qur'an: 28:4 and 38-39, 20:71, 26:22, 43:54 and 11:97.
- 81 See Qur'an 11:59, 26:130 and 41:15.
- 82 Ibid., 26:151-52 and 27:48-49.
- 83 Ibid., 27:34.
- 84 Ibid., 2:205.
- 85 Ibid., 5:33-34.
- 86 The other being the offence of intentional murder. See Qur'an 5:32. In this regard, one may also refer to a well-known tradition of the Prophet (peace be on him) which mentions three grounds for death punishment: intentional murder, unlawful sexual intercourse by a married person and apostasy.
- 87 Mawdudi, *Al-Jihad fi 'l-Islam*, 70-77.
- 88 Abu 'l A'la Mawdudi, “Mas'ala-e-Khilafat mayn Imam Abu Hanifah ka Maslak [The Legal Position of Imam Abu Hanifah on the Issue of Caliphate]”, in *Tafhimat*. Lahore: Islamic Publications, 1978. 3:269-299.
- 89 Abu 'l A'la Mawdudi, “Khuruj kay Baray mayn Imam Abu Hanifah ka Maslak [The Legal Position of Imam Abu Hanifah on the Issue of Rebellion]”, in *Tafhimat* (Lahore: Islamic Publications, 1978) 3:300-320.
- 90 See my forthcoming article: “The *Jus ad Bellum* of Rebellion in the Hanafi Law”.
- 91 Muhammad Hamidullah, *The Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 1945).
- 92 Ibid., 156.
- 93 The title of the original text was *Jihad: al-Faridah al-Gha'ibah*. It has been translated into English by Johannes J. G. Jansen under the title of *The Neglected Duty* (New York: Macmillan, 1986). A recent translation has been made with annotated notes by Abu

- Umamah under the title *Jihad: The Absent Obligation* (Birmingham: Maktabah al-Ansaar, 2000).
- 94 That is the reason why some of the renowned Western scholars have devoted much of their energy to studying this booklet. See, for instance: John Kelsay, *Islam and War: A Study in Comparative Ethics* (Louisville: Westminster/John Knox, 1993). See also: *Idem*, *Arguing the Just War in Islam* (Cambridge: Harvard University Press, 2007).
- 95 Faraj, *The Absent Obligation*, 30-36.
- 96 *Ibid.*, 16-20.
- 97 *Ibid.*, 24.
- 98 *Ibid.*, 25 ff.
- 99 *Ibid.*, 47.
- 100 Yusuf al-Qaradawi, *Fiqh al-Jihad: Dirasah Muqarinah li-Ahkamih wa Falsafatih fi Daw' al-Qur'an wa 'l-Sunnah* (Doha: Qatar Foundation, 2008).
- 101 *Ibid.*, 2:1029-1067.
- 102 *Ibid.*, 1031-1032.
- 103 *Ibid.*, 1032.
- 104 *Ibid.*, 1032-1033.
- 105 *Ibid.*, 1033.
- 106 *Ibid.*, 1034.
- 107 *Ibid.*
- 108 *Ibid.*, 1035-1038.
- 109 *Ibid.*, 1038-1040.
- 110 *Ibid.*, 1040-1053.
- 111 *Ibid.*, 1053-1063.
- 112 *Ibid.*, 1063-1066.
- 113 Abou El Fadl, *Rebellion and Violence*, 12.
- 114 *Ibid.*, 8 and 20-23.
- 115 *Ibid.*, 32-61.
- 116 *Ibid.*, 37-47.
- 117 *Ibid.*, 47-60.
- 118 Jassas, *Ahkam al-Qura'n*, 1: 99-101.
- 119 Abou El Fadl, *Rebellion and Violence*, 61.
- 120 *Ibid.*, 123.
- 121 *Ibid.*, 61 fn. 120.
- 122 "The type of reconstructive or revisionist work that Schacht and

others have done and do with Islamic law is not consistent with the way law develops." (Ibid., 22, fn 59).

123 Ibid. (emphasis added).

124 Thus, while discussing the "obedience and counter-obedience traditions", he says: "it is very likely that both types of tradition *appeared* contemporaneously." Ibid., 120 (emphasis added). At another place, he observes that the tradition about disobedience to unlawful commands "was put into the form of an interesting narrative." Ibid., 121.

125 Ibid., 34.

126 Perhaps, the only systematic and thorough study of the methodology of the pre-Shafi'i jurists is the one conducted by Zafar Ishaq Ansari in his doctoral dissertation titled: "The Early Development of Islamic *Fiqh* in Kufah with Special Reference to the Work of Abu Yusuf and Shaybani." (McGill University, Montreal, Canada, 1966). Nyazee has also given considerable details of the methodology of the earlier jurists. See his *Theories of Islamic Law*, particularly the chapter on the "Theories of General Principles" (147-176).

127 Abou El Fadl, *Rebellion and Violence*, 144.

128 Ibid., 144-145. Khadduri edited and translated into English three chapters from Shaybani's *Kitab al-Asl* and gave the title of *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: John Hopkins University Press, 1966). Scholars including Abou El Fadl presumed that this was all that Shaybani wrote on *Siyar*. Thus, when they compared it with Sarakhsi's commentary titled *Sharh al-Siyar al-Kabir* they thought that either Sarakhsi was reading from his memory or the text that Khadduri edited was not Shaybani's. Mahmood Ahmad Ghazi (d. 2010), a renowned scholar of Islamic Studies, showed that apart from the three chapters which Khadduri edited and translated, Shaybani wrote two separate books on these issues: *al-Siyar al-Kabir* (on which Sarakhsi dictated the five-volume commentary) and *al-Siyar al-Saghir* (on which commentary of Sarakhsi is found in his magnum opus *al-Mabsut*). Ghazi then edited and translated the text of *al-Siyar al-*

Saghir: Shorter Book on Muslim International Law (Islamabad: Islamic Research Institute, 1998).

129 Ahmad, *Jihad, Muzahamat awr Baghawat*, 642-726. The first edition of the book was published in 2008. The second edition appeared in 2012 and the third edition has been published in 2016. All the references in the present article come from the third edition.

130 *Ibid.*, 631-640.