

Why We Need a Just Rebellion Theory

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The Arab Spring has generated a variety of responses from the West. While broad political support was voiced for uprisings in Egypt, Tunisia, and Yemen, the responses to protests in Bahrain and Morocco were muted. The swift decision to intervene in Libya stands in marked contrast to the ongoing hand-wringing on Syria. While political realists might see these contradictions as evidence that geopolitical concerns determine foreign policy, from an ethical point of view these responses also reveal a fundamental tension in Western thinking about rebellion. On one hand, rebellion is viewed with a distrustful eye—as a disruptive, chaotic force that threatens to destroy the day-to-day order on which civilization is built. On the other, rebellion is perceived more optimistically—as a regenerative, creative force that can leave a better civilization in its wake. These two radically disparate ways of thinking about rebellion have deep philosophical and theological roots. The pessimistic view has historically dominated just war thought, as James Turner Johnson's contribution to this roundtable illustrates; whereas the perspective of Enlightenment liberalism offers a more optimistic judgment, as found, for example, in the works of Locke and Rousseau.

Because these two influential streams of thought are in such tension with each other, our thinking about rebellion in the West tends to be piecemeal, driven more by gut reactions than by philosophical reasoning and careful political analysis. As a result, our responses to rebellion are scattered, unpredictable, and unfortunately often tragically misplaced.

Sadly, we are all too frequently confronted by the moral dilemmas of rebellion: while international war has been fading from the world stage, intrastate war—including both civil wars and intercommunal warfare—has surged.¹ The lack of a systematic and rigorous ethical framework for evaluating the justness of

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rebellions makes it difficult to respond to them within a just war context. What the West desperately needs is a new theory of just rebellion—a systematic way of evaluating the justness of real world rebellions, of determining appropriate state responses to domestic rebellions, and of weighing the pros and cons of intervention. In this essay I trace the origins of this tension in Western thought and suggest a way of reimagining the problem by drawing on Islamic political theology.

A LITTLE HISTORY

The two opposing ways of thinking about the ethics of rebellion in the West have existed alongside each other for much of their modern history, each sometimes superseding the other in public discourse, but never completely suppressing it. The tension between the two stems from their fundamentally different approaches to political authority. Historically, for just war thinkers, legitimate authority to wage war was concentrated in the state. Skepticism about the state as a moral actor has led some contemporary just war scholars to shift the locus of legitimate authority upward, above the state, but the most prominent just war thinkers, most notably Michael Walzer and Jean Elshtain, still defend the state as the appropriate nexus of legitimate political authority.²

For Walzer, although the rights of states to territorial integrity and political sovereignty derive from the rights of individuals, the value of the state itself is something greater than the sum of its parts.³ The state represents the communal life of the people, and it derives its moral and political strength from “the right of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves.”⁴ A state’s legitimacy is thus measured by the “fit’ between the government and the community, that is, the degree to which the government actually represents the political life of its citizens.”⁵ Thus, the state maintains its own moral standing as long as it defends the common life of its citizens—even if its domestic regime is deeply flawed, and even if its borders are poorly drawn.⁶ Jean Elshtain, too, finds value in the political sovereignty of the state, and the civic goods it provides to its citizens.⁷

The emphasis placed on the state within the Christian just war tradition led it historically to treat rebellion as a great evil. Just war theorists imagined the state as a gift, given by God to create order in a fallen world.⁸ The state was a special kind of good, because the order it generated was necessary for earthly peace. Without

some modicum of peace not only would human life be physically miserable but humans would find it even more difficult to pursue spiritual goods. To rebel against the state unjustly was thus to join forces with disorder and chaos. Augustine described civil war as an even greater evil than war between states; Aquinas held sedition to be a mortal sin because it violated such a special good.⁹

But what if the state did not serve to create order, but instead undermined it because of its tyrannical behavior? On this question, traditional just war theorists did not speak with a single voice, because of their differing conceptions of authority. Some, including Aquinas, drew on a classical conception of natural law to justify tyrannicide.¹⁰ Because a tyranny “is directed not to the common good, but to the private good of the ruler . . . there is no sedition in disturbing a government of this kind.”¹¹ However, the fight against tyranny should not be “initiated though the private presumption of a few, but by public authority”—that is, by lesser magistrates whose overarching duty to serve the state would in this instance trump their obligation to obey their superiors.¹² Suarez took this idea the farthest, declaring that “a war of the commonwealth against the prince, even if it be offensive, is not intrinsically evil . . . when the prince is a tyrant.”¹³ Although Suarez agreed with his predecessors that private individuals could not claim just authority, and thus could act only in personal self-defense, he argued that “the commonwealth as a whole” could rise up against the tyrant, since it was the source of his authority.¹⁴

For many classical just war thinkers, however, rebels (even against tyrants) were inherently illegitimate actors. Althusius thus forbade private persons the right to use force against tyrants, except in personal self-defense—it being preferable to “flee to another place” than to resist.¹⁵ Calvin warned against interpreting the principle that rulers bore responsibility toward their subjects as releasing the people from obedience to unjust and cruel kings.¹⁶ At the dawn of the modern era, Grotius, too, denied a “common right of resistance” to the people, lest the state’s ability to maintain “public peace and order” be undermined.¹⁷

It is important to note that none of these thinkers believed that bad rulers should be given a *carte blanche* to behave badly toward their own people. While private individuals were denied the right to rebel, other states were allowed to intervene, if necessary, to reestablish domestic justice and order. Calvin pointed to biblical examples of foreign armies punishing tyrannical kings of Israel; Luther made similar references.¹⁸ Thus, foreign kings were permitted what the people themselves were not. Likewise, domestic magistrates could also initiate rebellion

against a tyrannical government. Althusius thus allows “public persons” to use force to dethrone a tyrant, a view that can also be found in Calvin and Luther.¹⁹

Nonetheless, even those classical just war thinkers who permitted rebellion against tyranny greatly limited the circumstances under which it would be permissible. Prudentially, they worried that rebellion might generate even more disorder than would tyranny. First, a rebellion might cause disproportionate domestic suffering. Aquinas thus suggested that if “the tyranny is not excessive,” it might be better to endure it: a failed rebellion might provoke a savage campaign of suppression, while a successful one might itself establish nothing more than a new form of tyranny.²⁰ Second, rebels might abuse the qualitative distinction between bad kings and tyrants. Aquinas warned that “the lordship of a just king is usually no less a burden to the wicked than that of a tyrant.”²¹ Likewise, Luther counseled that recognizing a right to tyrannicide could lead to a tendency “arbitrarily to call men tyrants who are not tyrants.”²² Thus, instead of rebelling with arms, Luther suggested that peaceful petitions and protests were in order. Luther believed that a tyrant remained a rational human being, despite his failings, and thus that there was always hope that he would see the error of his ways.²³ Lastly, a tyrant could be a vehicle of God’s punishment, in which case resistance would only compound God’s wrath. Calvin argued that, in the face of such chastisement, rather than rebelling, the people should humbly submit and pray for God’s forgiveness.²⁴

By contrast, classical liberal thought has emphasized the rights of individuals over the prerogatives of states. Locke, like Hobbes before him, began his treatise on government with a discussion of how men moved out of the state of nature through the social contract. Individuals thereby ceded some of their autonomy for the sake of stability and order. For Hobbes, this contract eviscerated individual rights, leaving only an individual’s right to be free from unwarranted physical harm untouched. But in Locke’s view, individuals did not cede all their rights by joining in society; ultimate sovereignty remained with the citizens. Thus, writes Locke, “Governments are dissolved . . . when the legislative, or the Prince, either of them act contrary to their Trust.”²⁵ Individuals do not actually renounce anything of significance, Rousseau argues, by accepting the social contract. Instead, “they have made an advantageous exchange,” gaining security, liberty, and social rights.²⁶ According to this perspective, sovereignty resides in individuals and communities, rather than in princes and states; the state’s legitimacy as an actor (both in domestic and international affairs) depends upon its ability to foster the common good of its people. Leaders who fail to do so effectively enter “into a state of

War with those who made them the Protectors and Guardians of their Peace,” becoming themselves rebels against the domestic order.²⁷

In this way, from the Enlightenment era onward rebellion against unjust rule began to be seen not just as something permissible but possibly even as something honorable and heroic. As the “subject” became the “citizen” in the eighteenth century, we began to imagine that the people have certain rights. States, in this view, are obliged to protect these rights; if they do not, the people have the right to take control of the state, which, after all, rules in their name. Thus, Locke locates “a Power in the People of providing for their safety a-new” by instituting a new government when the old one has “acted contrary to their trust.”²⁸ While the classical just war thinkers imagined states as instituted by God for the benefit of mankind, Enlightenment philosophers believed that the authority of states arose from the special way in which they represented and protected their citizens. Sovereignty, therefore, was no longer imagined as an automatic fact about states, but rather as a right that comes with certain reciprocal duties.²⁹ In the current century, this particular view of sovereignty has become enshrined in the emerging “responsibility to protect” norm, which makes states morally responsible for protecting the human rights of their citizens.

Because we now weigh the rights of individuals more heavily, our moral intuition seems to more easily permit rebellion than was once the case. Tyrants, in the traditional view, are problematic because they do not rule on behalf of the community. But according to this view, many an authoritarian leader could, arguably, claim to serve the community while trampling on the rights of individuals. Our new moral sensitivities would suggest that this is unacceptable, and that—if no alternative is available—rebellion might be permissible in such instances. At times, this alternative perspective has meant that rebellion has been romanticized and idealized: the suffering of the people today is worthwhile in the name of the rights to be gained by their children. Marx put it poetically: revolutionary force is “the midwife of every old society that is pregnant with a new one.”³⁰ Similarly, Jefferson wrote that “a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical.”³¹ Revolution is thus a creative force—destructive of the old, while simultaneously constructive of the new. This too can be problematic, as an overly permissive approach to rebellion can lead not only to unjust rebellions but—perhaps more tragically—to just rebellions that lack any hope of success. Furthermore, romanticizing rebellion can tempt intervening states to rashly commit themselves to causes that “sound” like values to which they themselves aspire.

The difficulties that arise from the more optimistic and permissive perspective of rebellion notwithstanding, clinging to the canonical and restrictive approach can lead to political paralysis. Intuitively, our sense of justice is violated when we witness massive human rights violations committed by an oppressive and tyrannical state. The choice of whether or not to intervene necessitates the weighing of proportionality and probability of success, a calculus that frequently adds up to outside parties doing nothing. The more complex and risky military intervention appears to be, the less likely intervention is to occur—except, perhaps, when a singular, horrific act so shocks our conscience that we are forced to adjust the equation.

REIMAGINING THE DILEMMA

A fruitful way to reimagine the problem of rebellion can come from looking at how other cultural systems have approached it. Islamic just war thought, in particular, has a great deal to offer, in part because Islam shares many core values with Christian thought. Community is important, a good established by Allah for the betterment of human beings. But individual human dignity remains important as well. Individuals have value *as individuals* in the sight of Allah, and therefore we can find at the core of Islam the same tension as in Christianity between social and individual goods. As in the Christian tradition, a concern with social order and a yearning for a unified community underpins a presumption against rebellion. Thus, the Qur'an instructs believers to "obey God and obey the messenger and obey those with authority among you."³²

However, unlike the Christian tradition, which treats rebellion itself as the source of disorder, Islam takes rebellion to be the *result* of it. Consequently, although rebellion belongs to the realm of necessity and cannot be considered an unqualified good, it can at times be a moral requirement. Indeed, several early Muslim legal scholars upheld a *duty* to rebel in cases where the caliph failed to uphold his public Islamic duties. Thus, Abu al-Hasan al-Mawardi (Alboacen), Abu Hamid al-Ghazali, and others pointed to the Qur'an to justify rebellion against such tyrants.³³ After all, a tyrannical caliphate was not only oppressive, but such poor governance tore the community apart. Even if the rebels were mistaken, and the ruler was not actually unjust, they were not deemed inherently "dissolute or evil."³⁴ Thus, the rules of *akham al-bughat*, which deal with the ethical treatment of Muslim rebels, were applicable "whether a ruler is just or unjust."³⁵

This is not to say that Islamic jurists permitted rebels free reign. Rebellion remained a serious matter—by its nature it, too, leads to dissension in the community. Thus, if certain groups of Muslims revolt against a *just* leader, their rebellion is to be suppressed, by force of arms if necessary. The first step, however, is to seek a just settlement to the dispute. The Qur'an thus enjoins the leaders to "make settlement between them in justice and act justly" if conflict should break out between factions.³⁶ Al-Mawardi and Muhammad al-Shaybani both argue that force can be used only against rebels *who use force first*. If they simply withdraw to another territory, but do not attack the polity, they are to be left alone. Even Taqi al-Din Ahmad ibn Taymiyya, who sees rebellion in a dimmer light, treats fighting against it as a matter of last resort, to be undertaken only when all else fails.³⁷ As John Kelsay makes clear in his discussion of the juristic tradition of *akham al-bughat* in his contribution to this roundtable, the aim of war against rebels was to restore the unity of the community, and thus a greater amount of restraint had to be exercised in suppressing rebellion (as opposed to, for example, fighting against non-Muslim powers).³⁸

Because a harsh response to rebellion may be worse than tolerating it, given that such a crackdown may only further divide the community, the *in bello* limitations on fighting such Muslim rebels are quite strict. Al-Shaybani explains that even by participating in the uprising, the rebels do not completely lose their property rights: "When the war comes to an end, everything should be returned to its [original] owners."³⁹ (This is in stark contrast to the property of disbelievers, which is to be distributed among the jihadis as spoils of war.) The state's responsibility to protect the rebels from outside harm also remains in force. Indeed, if non-Muslims attack the rebels' strongholds, the loyalists would have an obligation to defend their co-religionists by fighting off the disbelievers.⁴⁰ All of these regulations suggest the primary goal is to restore the unity of the Islamic community as soon as possible, and thus to fight in a way that does as little as possible to deepen the rift.

Approaching the problem of rebellion from this perspective can help us refocus on the key issue: finding the most efficacious path to (re)creating justice and order. The Islamic perspective is useful to consider, since it suggests that when evaluating disorder within the polity, we must separate proximate from ultimate causes. Insofar as rebellion involves the use of force, it can be said to cause disorder. But if rebellion is a *symptom* of serious failures on the part of the state, the ultimate cause of the disorder lies not with the rebels but with the state itself.

The Islamic tradition's emphasis on limiting the scale and scope of violence even when suppressing a rebellion leads us to the insight that the *response* to

rebellion may itself create more disorder. This suggests that states ought to exercise restraint, even in the face of a violent rebellion. One could arrive at the same conclusion through the Western tradition. There is no logical reason that the *in bello* rules of discrimination and proportionality should cease to apply in intrastate war; in fact, the Geneva Conventions requires that “certain basic humanitarian rules must be respected in internal disputes.”⁴¹ The Islamic tradition thus provides us with another reason such care should be taken: *in bello* limitations not only help protect individual human rights but also aid in the preservation of the possibility of community. Put differently, the idea that a rebellion should be suppressed in a way that makes future peace possible can be imagined as creating a sort of “responsibility to reconcile.”

The continuing tragedy of the Syrian Arab Spring serves as a useful illustration of how the Islamic tradition can enrich our thinking about rebellion. The belief that rebellions should be suppressed in a way that protects, rather than fragments, the political community can give us moral language to explain why the Assad regime’s response seems so disproportionate. If the good the regime is meant to protect through the use of force is the possibility of a reunited political community, indiscriminate or excessive means undermine that project—regardless of whether or not we sympathize with the rebels’ goals.

TOWARD A THEORY OF JUST REBELLION

Traditional Western just war principles should be reimagined to help us think about the ethics of rebellion. This could help make it possible to judge between just and unjust rebellions—and between just and unjust responses to rebellion. Both sets of judgments, in my view, hinge on the assumption that we can keep the old categories of just war while radically reimagining some of the key norms that underpin them.

Sovereign authority still matters for most of us, as it did for the canonical authors of the just war tradition. While the rights associated with sovereignty were once limited to states, we now recognize that—while still embodied in states—their roots are in human beings. Consequently, when polities fail to protect human rights, their reciprocal right to sovereignty is undermined. Rebellion may be justified in such cases—as our more liberal impulses suggest—but only if the good to be achieved outweighs the harm.

This proportionality criterion might be met if the state in question is truly tyrannical, and if a rebel victory is not only realistically possible but will also likely lead to the formation of a more just domestic order. After all, as the Islamic tradition suggests, the existence of a rebellion itself points to some sort of disorder within the community. Because a just political order and communal reconciliation should be the goals both of the state and of the rebels, last resort is also a key issue to consider. The Islamic tradition suggests a way of adding teeth to this principle: until the rebels themselves resort to violence, the state ought to refrain from using force. States may, nonetheless, use police actions to arrest and try rebels in the name of public order. Rebel groups ought not initiate the use of force unless the tyrannical state's violent behavior is widespread and grave, threatening the lives not only of rebel sympathizers but of other civilians as well. In this case, the burden is on rebels to demonstrate that the state does pose such a threat, and that they themselves are capable of establishing a more just order.

Restraint alone, however, is not enough. Both parties must actively seek to recreate the conditions necessary for peace—that is, they must take each other's positions seriously enough to make a negotiated solution possible. Reflecting on the Islamic tradition, this attempt at reconciliation is essential not only before a civil war has erupted but also during and after the strife. Any party—whether state or rebel—wanting to aim at restoring order must fight in a way that makes future peace possible. To this end, once the conflict is over, attempts must be made toward the restoration of the unity of the community, the return of property, reparations, and the punishment of individuals who have broken the laws of war.

The good news is that it is possible to reimagine just war principles in a way that helps clarify both rebels' and states' responsibilities. The bad news is that, just as these principles have done more over the past millennia to define the terms of the argument about justice in war rather than to resolve it, they will not magically generate consensus in the future, nor will they do any more (or less) to constrain state behavior. Nevertheless, simply being able to frame the terms of the debate is a significant first step in both moral reasoning and moral action.

NOTES

- ¹ Karen A. Feste, *Intervention: Shaping the Global Order* (Westport, Conn.: Praeger, 2003), p. 150. See also Marie Olson Lounsbury and Frederic Pearson, *Civil Wars: Internal Struggles, Global Consequences* (Toronto: University of Toronto Press, 2009), p. 16. Generally, civil wars are fought between the state and a rebel group, while intercommunal violence is fought between nonstate actors. A rebellion, simply put, is a form of violent struggle aimed at overthrowing a political regime. Civil

- wars, in the comparative literature, must reach a certain threshold of battlefield deaths. While not all rebellions reach the intensity of civil wars, the latter by definition require rebellion. See Nicholas Sambanis, "What is Civil War? Conceptual and Empirical Complexities of an Operational Definition," *The Journal of Conflict Resolution*, 48, no. 6 (2004), p. 816. See also Diana E. H. Russel, *Rebellion, Revolution, and Armed Force: A Comparative Study of Fifteen Countries with Special Emphasis on Cuba and South Africa* (New York: Academic Press, 1974), p. 146.
- ² Brian Orend addresses the centrality of the state and the state system in Walzer's thought in *Michael Walzer on War and Justice* (Montreal: McGill Queens University Press, 2001), pp. 5, 7, 38, 56, 89, and elsewhere.
- ³ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2000), p. 53.
- ⁴ Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy & Public Affairs* 9, no. 3 (1980), p. 211.
- ⁵ *Ibid.*, p. 214.
- ⁶ Walzer, *Just and Unjust Wars*, pp. 54, 57.
- ⁷ Jean Bethke Elshtain, *Sovereignty: God, State and Self* (New York: Basic Books, 2008), pp. xv, 158.
- ⁸ St. Augustine, *City of God*, John O'Meara, trans. (London: Penguin Books, 1984), pp. 599, 870 (Book XV: chapter 4; Book XIX: chapter 13).
- ⁹ Augustine, *City of God*, pp. 124–30 (Book III: chapters 23–29); Thomas Aquinas, "Summa theologiae, IIaIIae 42: On sedition," in R. W. Dyson, ed., *Aquinas: Political Writings* (Cambridge: Cambridge University Press, 2002), p. 250.
- ¹⁰ Compare Cicero, "On Duties," Book III, nos. 30–32 in M. T. Griffin and E. M. Atkins, eds., *Cicero, On Duties* (Cambridge: Cambridge University Press, 1991), pp. 110–11; and Thomas Aquinas, "*Scripta super libros sententiarum*," art. 2, in Gregory Reichberg, Henrik Syse, and Endre Begby, eds., *The Ethics of War* (Oxford: Blackwell Publishing, 2006), p. 195.
- ¹¹ Aquinas, "*Summa theologiae*," IIaIIae 42, article 2, adversus 3, in *Political Writings*, p. 250. See souledevicewordpress.com/2010/09/21/citing-thomas-aquinas's-summa-theologiae/.
- ¹² Aquinas, "*De regimine principum*," Book I, chapter 7, in *Political Writings*, p. 20.
- ¹³ Francisco Suarez, "*De triplici virtute theologica*," Disputation XIII (De Bello), Section VIII, para. 2, in *The Ethics of War*, p. 369.
- ¹⁴ *Ibid.*
- ¹⁵ Johannes Althusius, "*Politica*," Book XXXVIII, in *The Ethics of War*, p. 383.
- ¹⁶ John Calvin, *Institutes of the Christian Religion*, Henry Beveridge, trans. (Edinburgh: Calvin Translation Society, 1846), Book 4, chapter 20, section, 29, p. 673.
- ¹⁷ Hugo Grotius, "*De iure belli ac pacis*," Book I, chapter IV.ii, in *The Ethics of War*, p. 399. See also Francisco de Vitoria, "On Civil Power," question 3, article 6, in Anthony Pagden and Jeremy Lawrence, eds., *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991), p. 42.
- ¹⁸ Calvin, *Institutes of the Christian Religion*, Book IV, chapter 20, para. 29, p. 674. See also Martin Luther, "Whether Soldiers, Too, Can be Saved," in Theodore G. Tappert, ed., *Selected Writings of Martin Luther, 1529–1546* (Philadelphia: Fortress Press, 1967), vol. IV, p. 450.
- ¹⁹ Althusius, "*Politica*," XXXVIII, in *Ethics of War*, p. 383.
- ²⁰ Thomas Aquinas, "*De regimine principum*," Book I, chapter 7, in *Political Writings*, p. 18.
- ²¹ *Ibid.*, p. 19.
- ²² Luther, "Whether Soldiers, Too, Can be Saved," in *Selected Writings*, p. 446.
- ²³ *Ibid.*
- ²⁴ John Calvin, *Calvin: Institutes of the Christian Religion, Volume 2*, John T. McNeill, ed. (Philadelphia: The Westminster Press, 1960), vol. 21, book 4, chapter 20, section 29, p. 1518.
- ²⁵ John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), p. 411 (Book II, chapter 29, para. 221, pp. 2–5).
- ²⁶ Jean Jacques Rousseau, *The Social Contract and Discourses* (London: J. M. Dent and Sons, 1920), p. 29.
- ²⁷ Locke, p. 416 (Book II, chapter 29, para. 227, pp. 15–25).
- ²⁸ John Locke, "The Second Treatise," in Peter Laslett, ed., *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), p. 415, para. 223.
- ²⁹ Even Kant, who denied that the people had coercive rights against rulers who breached their contracts, admitted that they nonetheless had "inalienable rights" against that ruler, including freedom of the pen. See Immanuel Kant, "Theory and Practice," in *Perpetual Peace and Other Essays*, Ted Hemphrey, trans., pp. 81–82.
- ³⁰ Karl Marx, *Capital: Volume 1* (New York: Courier Dover Publications, 2012), p. 824.
- ³¹ From a 1787 letter to James Madison, quoted in *Whitman: The Political Poet*, Betsy Erkkila (Oxford: Oxford University Press, 1996). Whitman likewise argued that "all that is good and grand in any political organization in the world is the result of this turbulence and destructiveness," p. 103.

- ³² Qur'an 4:59.
- ³³ "And they shall say: O our Lord! surely we obeyed our leaders and our great men, so they led us astray from the path; O our Lord! give them a double punishment and curse them with a great curse"; 33:67–68.
- ³⁴ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001), p. 325.
- ³⁵ *Ibid.*, p. 326.
- ³⁶ Qur'an 49:9.
- ³⁷ Mohd Farid bin Mohd Sharif, "Baghy in Islamic Law and the Thinking of Ibn Taymiyya," *Arab Law Quarterly* 20, no. 3 (2006), p. 305.
- ³⁸ Beyond Kelsay's article in this collection, for a more in-depth discussion of *akham al-bughat* see John Kelsay, *Arguing the Just War in Islam* (Cambridge, Mass.: Harvard University Press, 2009), pp. 125–54, and Abou El Fadl, *Rebellion and Violence in Islamic Law*.
- ³⁹ Muhammad ibn al-Hasan al-Shaybani, *The Islamic Law of Nations: Shaybani's Siyar*, Majid Khadduri, trans. (Baltimore, Md.: The Johns Hopkins Press, 1966), p. 232, para. 1376. See also the return of weapons, par.1388.
- ⁴⁰ *Ibid.*, pp. 245–46, para. 1535–1536.
- ⁴¹ Ingrid Detter, *The Law of War* (Cambridge: Cambridge University Press, 2000), p. 200.