1 Introduction: Legitimacy, Religion, and Violence

> Religions, by whatever names they are called, all resemble each other. No agreement and no reconciliation are possible between these religions and philosophy. Religion imposes on man its faith and its belief, whereas philosophy frees him in totally or in part.[1]

This book is about politics. It explores theoretical discourses in which religion is used to legitimize *political* violence. Its main concern is how Christianity and Islam are utilized for political ends, particularly those in which violence is used (or abused) as an expedient to justify political action. To clarify what is meant by "religious" and "political," this study follows H. A. Drake's definition of intolerance as a religious problem and coercion as a political one.[2] Consequently, violence as a means of coercion is primarily a political, not a religious, problem. For the purpose of this book, (violent) political action is understood as all (violent) actions that occur outside the private realm.

This book is also a response to the predominantly one-sided public and scholarly debate that focuses almost exclusively on fundamentalist or extremist movements in Islam or islams, which is overshadowed by the perception of Islam as a religion prone to violence. This judgment is closely related to the problem of international (Islamic?) terrorism and ignores the fact that national violence is much more prevalent than what is commonly labeled as "international terrorism" or other forms of transnational violence.[3] Neither of these problems is a prerogative of Islam. The religious legitimation of violence remains an integral part of the history of most if not all religions.

Although this study is not the first to utilize a comparative approach to politics in Christian and Islamic cultural settings, it nonetheless fills a gap. Most of

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1 Jamāl ad-Dīn al-Afghānī, "Answer of Jamāl ad-Dīn to Renan," *Journal des Débats*, May 18, 1883, in Nikki R. Keddie, *An Islamic Response to Imperialism: Political and Religious Writings of Sayyid Jamāl ad-Dīn "al-Afghānī"* (Berkley: University of California Press, 1983), 187.

2 H.A. Drake, *Constantine and the Bishops: The Politics of Intolerance* (Baltimore: Johns Hopkins University Press, 2000), xvi.

3 This study is explicitly *not* about "terrorism." As noted by Peter R. Neumann and M.L.R. Smith, *The Strategy of Terrorism: How it Works, and Why it Fails* (Oxon: Routledge, 2008), who consider terrorism primarily a tactic, 94, "[t]he term [terrorism] is both popular and its meaning is hotly contested amongst political actors, giving rise to sensationalism and political name-calling which rarely serves the cause of defining an intellectual concept." For terrorism as a tactic, see also Robert E. Goodin, *What's Wrong with Terrorism?* (Cambridge: Polity, 2006), 31–49.

the existing studies with a transcultural approach compare religious fundamentalism in the United States and the Islamic world, often indirectly (and accidentally) deepening the rift between the U.S. and the Islamic world.[4] This study follows a different path. First, it explores the premodern traditions in both religious cultures in predominantly Christian Europe and the Muslim world of the time. Second, it compares the modern theoretical discourses on legitimizing violence in the Islamic (primarily Middle Eastern[5]) world with those in Latin America, which shares a similar colonial past; in many respects, both regions are still not part of the industrialized world. Moreover, these regions remain of geopolitical concern for hegemonic powers. In both geographic regions and religious-cultural contexts, state power and its legitimacy are tied to religion, albeit in dissimilar ways. With the dominance of the Catholic Church in Latin America, a focus on the Catholic tradition can be also justified by means of a rather likely continuation from the premodern discourses. Consequently, the number of theoretical texts and treatises aiming to legitimize violence and counter-violence is significant. In addition, in these two geographic regions, premodern texts and authorities have been utilized to legitimize hegemonic and anti-hegemonic violence. Thus, contemporary discourse on violence can only be fully understood if their premodern precursors are not ignored. Essentially, what is framed as hegemonic and anti-hegemonic here relates to the problem of inclusion and exclusion.

At first glance, it might appear counter-intuitive to move from an investigation of religious foundations and premodern discourses on violence directly to the twentieth century. Because of the enormous impact of premodern authorities on the formulation of contemporary justifications of violence, this approach includes a large number of relevant cases. In the Islamic world, the impact of traditional Islamic schools on modern interpretations of Islamic law is considerable. A number of scholars from the premodern period still enjoy almost undisputed authority. In the Latin American context, movements such as the *Societies for the Defense of Tradition, Family, and Property* (TFP) consider medieval

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4 See, for instance, Bruce B. Lawrence, *Defenders of God: The Fundamentalist Revolt Against the Modern Age* (Columbia: University of South Carolina Press, 1995). Jennifer L. Jefferis, *Religion and Political Violence: Sacred Protest in the Modern World* (London: Routledge, 2010).
5 Middle East, of course, is rather a modern Western concept. For a critical discussion see the contributions in *Is There a Middle East? The Evolution of a Geopolitical Concept*, ed. Michael E. Bonine, Abbas Amanat, and Michael Ezekiel Gasper (Stanford: Stanford University Press, 2012).

Christendom the ideal realization and fulfillment of Christian civilization.[6] In numerous instances, members of TFP have been linked with military regimes. Some of their opponents, closely connected with theologies of liberation, rely heavily on neo-Thomism. In addition, for both regions, it has been claimed and disputed that these hegemonic and anti-hegemonic movements are anti-modern in nature.[7] Consequently, without considering the medieval or premodern past, an analysis of twentieth and twenty-first century conflicts must remain fragmented.

Yet, this book is not particularly concerned with the question of whether religions in general, or monotheistic religions in particular, are prone to violence. These discourses (which are hotly debated among scholars of religious studies and related disciplines, particularly with respect to the question of monotheistic religions) inform this study as far as they enrich the epistemological interest of the political scientist, but they are not its main concern.[8]

As Hans G. Kippenberg notes, a "link between religion and violence is neither impossible nor necessary."[9] More importantly, Kippenberg highlights that even if a conflict is not caused by religion, this does not mean that religious interpretations of a conflict are avoided. A religious interpretation alters the conflict's nature.[10] This alteration of a conflict's nature has at least two implications. First, as suggested by numerous other scholars, it implies that conflicts in which

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6 Plinio Corrêa de Oliveira, *Revolution and Counter-Revolution*, 3rd English ed. (Spring Grove: The American Society for the Defense of Tradition, Family and Property (TFP), 1993), 14–17, 20–23, 41.

7 Michaël Löwy, "Modernité et critique de la modernité dans la théologie de la liberation," *Archives de Sciences Sociales des Religions* 71 (1990): 7–23. John Gray, *Al Qaeda and What it Means to Be Modern* (New York: The New Press, 2003).

8 Hector Avalos, *Fighting Words: The Origins of Religious Violence* (Amherst: Prometheus Books, 2005), 19, even goes so far as to argue that all religions—not only monotheistic religions—are prone to violence. However, his discussion remains in the framework of religions that Jan Assmann, *Moses the Egyptian: The Memory of Egypt in Western Monotheism* (Cambridge: Harvard University Press, 1997), 170, has classified as "counter religions" or "secondary religions" that are based on canonical texts and institutionalized interpretation and that "reject all older and other religions as 'paganism' or 'idolatry'" (7). See also Jan Assmann, *The Price of Monotheism* (Stanford: Stanford University Press, 2010), 104. Among theologians, however, monotheism's inclination to violence is debated. For a good overview of the main arguments for and against the violence thesis, see, for instance, Dietmar Mieth, "Aggression durch den Glauben? Eine christliche Sicht zum Thema 'Religion und Gewalt' unter besonderer Berücksichtigung des Toleranzbegriffes," in *Im Zeichen der Religion: Gewalt und Friedfertigkeit in Islam und Christentum*, ed. Christine Abbt, Donata Schoeller (Frankfurt: Campus, 2008), 118–141.

9 Hans G. Kippenberg, *Violence as Worship: Religious Wars in the Age of Globalization* (Stanford: Stanford University Press, 2011), 199.

10 Ibid., 200.

religious interpretations appear to dominate the discourse have (in most, if not all, instances) roots in socio-economic or political injustices and inequalities.[11] Second, if the true nature of a conflict is concealed by religious rhetoric, prospects for resolving the conflict are at least hampered, if not made impossible. Although most conflicts in which religious interpretation plays a significant role have other causes, the interaction between religion and politics deserves serious consideration. Based on convincing empirical evidence, Brian J. Grim and Roger Finke have shown that any political restriction on religion, whether by supporting one religion over others and forming an alliance with the favored one or by actively restricting religious freedom, results in an increase of violence independently of the religions in question, although this occurs to a greater degree in predominantly Muslim countries.[12]

If we ignore religion for a moment and focus on other underlying reasons for conflict and violence, such as socio-economic and political injustices and inequalities, then we are faced with one of the *core* problems of politics: political legitimation and legitimacy. As Wilfried Hinsch notes, legitimacy belongs "primarily in the domain of the political and relates to the exercise of coercive state power. [L]egitimacy is taken to be a necessary condition of any justifiable use of state power."[13] Excessive use of violence, whether in resistance movements against the *legal* government or in excessive and violent government actions against the people, is usually an indicator that legal state power is no longer perceived as legitimate—or, in other words, that the acceptance of the existing power structure is jeopardized.

Despite some significant overlaps, discourses on legitimacy play out differently in the modern liberal constitutional state. Therefore, it is useful to outline, at least briefly and by no means exhaustively, some particular concerns within the modern Western predominantly liberal discourses on legitimacy. Although framing non-Western discourses within a Western theoretical context may provoke accusations of hegemonic Eurocentrism or Orientalism, for this study,

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11 See, for instance, M. Amin Abdullah, "Introductory Elaboration on the Roots of Religious Violence: The Complexity of Islamic Radicalism," in *Innerer Friede und die Überwindung der Gewalt: Religiöse Traditionen auf dem Prüfstand. V. Internationales Rudolf-Otto Symposion, Marburg*, ed. Hans-Martin Barth and Christoph Elsas (Hamburg: EB-Verlag, 2007), 155–6. Mariella Ourghi, *Muslimische Positionen zur Berechtigung von Gewalt: Einzelstimmen, Revisionen, Kontroversen* (Würzburg: Ergon, 2010), 155. Brian J. Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century* (Cambridge: Cambridge University Press, 2011), 2.

12 Grim and Finke, *The Price of Freedom Denied*, 51, 71, 167.

13 Wilfried Hinsch, "Legitimacy and Justice: A Conceptual and Functional Clarification," in *Political Legitimization without Morality?,* ed. Jörg Kühnelt (Dordrecht: Springer, 2008), 39.

this is a necessary approach. First, this study is a contribution to discourses within political science. Because most concepts within the discipline have been shaped in the Western tradition, in order to speak to the discipline, relating the discourse to the discipline's concepts is of utmost necessity. Second, a Eurocentric perspective is not automatically a devaluation of other cultures, at least not if it is used and understood primarily as a tool to assist transcultural translation and to relate discourses outside Western political science tradition to the discipline. This study does not engage in the currently popular concept of transcultural dialogue as promoted by Fred Dallmayr.[14] The aim of this study is much smaller and perhaps more realistic: it engages in "translation" into academic discourses without aimaing expliclicitly at a transcultural diologue. This study assumes, with Norbert Elias, that "[o]ne can translate knowledge from one language into another. This seems to indicate an existence of knowledge in separation from that of language. [...] Up to a point the same message can be conveyed by different sets of sound-symbols."[15]

However, we must emphasize "up to a point." Anyone who has been engaged in language translation or has read the same text in two different languages knows that some nuances may be lost in translation, and this untranslated five percent or so makes a difference. As long as not all people have fluency or near-native knowledge in all languages and cultures, translation cannot be avoided, and, thus, one must accept at least some ambiguity. This situation applies not only to languages, but also (and perhaps even more so) to the transcultural translation of concepts and ideas.

Concepts, ideas, and knowledge are subject to frequent cultural transitions and exchanges. For instance, the translation movement between the eighth and tenth centuries in which originally Greek texts in philosophy and sciences were translated into and adopted by the Arabic culture subsequently[16] affected science, philosophy, and political thinking in Western Europe in the Latin translations of these texts. Therefore, the rhetoric of "us" versus "them" becomes blurred. Although scholars in comparative political theory allege that thoughts and

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14 Fred Dallmayr, "Comparative Political Theory: What is it Good For?," in *Western Political Thought in Dialogue with Asia*, ed. Takashi Shogimen and Cary J. Nederman (Lanham: Lexington, 2008), 22. For a critique and the limits of the dialogical approach, see Hassan Bashir, *Europe and the Eastern Other: Comparative Perspectives on Politics, Religion, and Culture before the Enlightenment* (Lanham: Lexington, 2013).

15 Norbert Elias, *The Symbol Theory*, ed. Richard Kilminster (London: Sage Publications, 1991), 132.

16 Dimitri Gutas, *Greek Thought, Arabic Culture: The Graeco-Arabic Translation Movement in Baghdad and Early ʿAbbāsid Society (2nd-4th/8th-10th Centuries)* (Abingdon: Routledge, 1998).

ideas from other cultures are frequently mistranslated and misunderstood in Western cultures,[17] this is not a prerogative of the so-called West. Whether these "mistranslations" are an expression of hegemonic imperialism that imply a devaluation of other cultures, as suggested in over-politicized colonial and postcolonial academic discourses, is more than doubtful, although it is a topic in itself. To emphasize that the cultural borrowing practice is by no means a one-way street, the example of Marx, who affected colonial and postcolonial discourses in both the Middle East and Latin America, may be sufficient. As is well known, Marx had some knowledge of Ibn Khaldun. Although this knowledge was second-hand or third-hand through William Mac Guckin de Sane and Friedrich Engels, the careful reader of Ibn Khaldun will find numerous ideas in the fourteenth-century thinker that are echoed in Marx.[18] Instead of reading Marxist ideas as alien to Middle Eastern or Islamic cultures, one can read Marx as an author who promoted ideas that were reconveyed to their cultural origin through the reception of Marx in the Middle East.

Another disputed question is whether the use of Western languages and related disciplinary terminology that does not have exact correspondences in different cultures signifies a hegemonic discourse. The problem, however, is far more complex; it is not simply a problem of more and less dominant language cultures. Similar problems apply in scholarly approaches to past cultures, although there these issues are less politicized. The politicization of scholarly approaches to non-Western political theory has led to some excesses. Following Martha Nussbaum, Alexander Weiß lists four "vices"—chauvinism, suspended normative skepticism, incommensurability, and perennialism—that are usually committed by (Western) readers of non-Western texts.[19] Unfortunately, the language of virtues and vices turns an epistemological problem into a moral judgment in the name of political correctness. The "vice" of chauvinism implies a stigmatization that the accused can hardly undermine on intellectually sound grounds and belongs in the realm of name-calling; it is anathema in any serious academic discourse.

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17 Farah Godrej, *Cosmopolitan Political Thought: Method, Practice, Discipline* (Oxford: Oxford University Press, 2011), 91, who expresses concerns about whether "creative reinterpretation occurs *across* cultural borders rather than just *within* them."

18 Jean Paul Charnay, *Regards sur l'islam: Freud, Marx, Ibn Khaldun: Essais et philosophie* (Paris: L'Herne, 2003), 152; for Ibn Khaldun's "socialist" ideas, 81–115. See also Nicholas S. Hopkins, "Engels and Ibn Khaldun," *Alif: Journal of Comparative Poetics* 10 (1990): 12–13.

19 Alexander Weiß, "Vier Laster einer vergleichenden politischen Theorie und das Projekt einer globalen Demokratietheorie," in *Nichtwestliches politisches Denken: Zwischen kultureller Differenz und Hybridisierung,* ed. Holger Zapf (Wiesbaden: Springer, 2012), 65–73.

This study deliberately applies what is described as "descriptive chauvinism," defined by Weiß as the application of categories that originate in the scholar's academic context. As noted by Hans-Georg Gadamer, "*language is the universal medium in which understanding takes place. Carrying out understanding is interpretation.*"[20] For Gadamer, a foreign language, which also implies a different or foreign culture, only implies increased hermeneutic difficulties in the intellectual process of acknowledging and overcoming its foreignness.[21] To overcome foreignness and to achieve understanding, it is necessary to transfer the previously unknown into a familiar language. Any demand to speak about the concepts and ideas of a different culture only in the other culture's terms, cloaked in the language of assumed "political correctness," denies itself the increased hermeneutic challenges of an intellectually sound transcultural translation. To use an example that is closer to home, one can only speak about the concept of the Greek *politeia* in a meaningful way if one either applies classic Greek or translates its meanings into familiar terms.[22]

The other "vice" that is willfully applied here is that of "perennialism," an "overestimation of the relevance of particular classic texts for texts of significantly later times."[23] Although it is ultimately up to the reader to judge whether the impact of classic texts has been overestimated, particularly when Islamic fundamentalist movements are addressed, the importance of interpretations of divine law from the ninth and tenth centuries, when the formation and establishment of the main legal schools occurred,[24] can hardly be overstated. The same applies to some "authoritative" texts (including Ibn Taymiyya's writings) that are frequently used by contemporary authors in support of their claims as well as to some texts with authoritative status in the Christian tradition.[25]

Using a different language, including different concepts, is beneficial in a way that can rarely be achieved if one remains within the original language traditions. Norbert Elias, who is by no means suspected of a hegemonic approach, emphasizes that "the range of knowledge [...], which covers all topics of commu-

20 Hans-Georg Gadamer, *Wahrheit und Methode: Grundzüge einer philosophischen Hermeneutik*, 7th ed. (Tübingen: Mohr Siebeck, 2010), 392, my translation; italics in the original.

21 Ibid., 391.

22 Here, I agree with Andrew F. March, "What Is Comparative Political Theory?," *The Review of Politics* 71, no. 4 (2009): 545–6, that we lack any convincing reasons why non-Western texts should be treated differently than texts originating in the Western tradition.

23 Weiß, "Vier Laster einer vergleichenden politischen Theorie," 69.

24 Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 150–177.

25 Assmann, *Moses the Egyptian*, 170, emphasizes the importance of canonical texts for what he calls counter or secondary religions such as Christianity and Islam.

nication, is further limited by the structure of a given society and particularly by its power relations."[26] In addition, as Hayden White reminds us, "every use of language itself implies or entails a specific posture before the world which is ethical, ideological, or more generally political: not only all interpretation but also all language is politically contaminated."[27]

To highlight the problem in the context of the concept of political legitimacy, if one aims to speak about legitimacy in the Arabic language, one usually applies the term *sharʿīya* (lawfulness, legitimacy, rightfulness). Although the corresponding meaning of the term's root does not imply any particular religious connotations, the dominant concept of *al-sharīʿa*, the revealed law of Islam, makes it difficult to speak about legitimacy in the Arabic language without explicit (or at least implicit) religious-Islamic connotations, even though the term itself is much older than Islam. The religious connotation reflects power relations and is the expression of hegemony within the culture. Similar religious connotations are apparent in the Persian or Farsi *mashrouʿiat* that covers both religious and political legitimacy.[28] In this sense, using a different language, including Western languages, can be employed as a tool to uncover these hegemonic power relations as well as to reveal political contaminations that are specific to one language culture. Because one must use language to communicate, political contaminations cannot be avoided, but they can and should be subject to critical reflection.

To underscore the differences between Western liberal discourses and discourses in which religion is considered *the* or *a* main source of legitimacy, I will briefly refer to Ronald Dworkin, Henry Shue, and Wilhelm Hennis. Dworkin and Shue are primarily concerned with rights and duties, namely the government's duty to acknowledge citizens' basic rights, which are usually recognized as constitutionally protected rights, to be in a position to expect citizens' obedience. Hennis's critical historical approach enables us to bridge the two discourses that are usually deemed incompatible, although this incompatibility is not undisputed.[29]

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26 Elias, *The Symbol Theory*, 49.
27 Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore: Johns Hopkins University Press, 1978), 129.
28 I wish to thank Djavad Salehi-Isfahani for clarifying the contemporary usage.
29 For the disputed incompatibility, see, for instance, P. R. Kumaraswamy, "Islam and Minorities: Need for a Liberal Framework," *Mediterranean Quarterly* 3 (2007): 94–109.

1.1 Legitimacy, Rights, and Duties in the Liberal Constitutional State

In *Taking Rights Seriously,* Ronald Dworkin suggests

> that we all accept the following postulate of political morality. Government must treat those whom it governs with concern, that is, as human beings who are capable of suffering and frustration, and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived. Government must not only treat people with concern and respect, but with equal concern and respect. It must not distribute goods and opportunities unequally on the ground that some citizens are entitled to more because they are worthy of more concern. It must not constrain liberty on the ground that one citizen's conception of the good life of one group is nobler or superior to another's.[30]

Ronald Dworkin reaches his conclusion based on the initial question of whether citizens have the right to disobey the law and their government if a law infringes on their moral rights.[31] In essence, this is an argument about the distinction between a government's legitimate and illegitimate demands for citizens' obedience. The argument demarcates the limits of a state's monopoly on violence. To invoke Max Weber's famous definition of a state ("a human community within a certain territory that claims (successfully) the monopoly on the use of legitimate physical force [*Gewaltsamkeit*]"),[32] it explores (although without explicit or implicit recourse to Weber) the area in which Weber falls short: to distinguish between the state's legitimate and illegitimate use of force against its citizens.

Yet, Dworkin's normative argument is situated in the context of a modern democratic constitutional state—specifically, in the legal framework of the United States, in which at least some moral rights are constitutionally protected and in which the state's monopoly on violence is juridified (*verrechtlicht*) through the constitution. In most instances, citizens can rely on legal means to protect themselves against an abuse of the state's power. The right to (violent) resistance re-

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30 Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), 272–3.

31 Ibid., 190.

32 Max Weber, *Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie*, 5th rev. ed. (Tübingen: Mohr Siebeck, 1980), 822: "Staat ist diejenige menschliche Gemeinschaft, welche innerhalb eines bestimmten Gebietes das Monopol legitimer physischer Gewaltsamkeit für sich (mit Erfolg) beansprucht."

mains in place as a backup for the exceptional cases in which the legal means of defense fail.[33]

However, if one leaves the framework of the modern democratic constitutional state for emerging nations—or, even more so, for premodern contexts, in which a hierarchically ordered society is the accepted norm—Dworkin's claim for equality may appear to be pure luxury (that it only appears so superficially has been implied and will be examined later in more depth). Notwithstanding the validity of Dworkin's argument for a person's right to a certain degree of equality, the fulfillment of other rights may be superordinated to equality, although not in the sense that one right should or could be traded for other rights or political ends.[34] In *Basic Rights*, Henry Shue makes a strong case for the acknowledgement of the priority of subsistence or basic economic rights. He develops the rights problematic as a normative claim toward U.S. foreign policy and argues for the triad of security, subsistence, and liberty because "[w]ithout security or subsistence one is helpless and consequently one may also be helpless to protect whatever can be protected on the risk of security and subsistence." In addition, Shue sees a "mutual dependence [...] between enjoyment of rights to some liberties and enjoyment of security and subsistence." The essential liberties in this context are the freedom to participate and the freedom to physical movement.[35]

Shue, however, does not claim that these are the only basic rights. Rather, he aims to draw attention to those rights that are most frequently neglected.[36] Additionally, because he analyzes basic rights from the perspective of U.S. foreign policy, he does not concern himself with the interdependence of the recognition of (moral) rights and political legitimacy. Nonetheless, his emphasis on the right to subsistence spotlights a sensitive issue. It is not incorrect to assume that violations of the right to subsistence are among the core issues that have stimulated

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33 Dieter Grimm, "Das staatliche Gewaltmonopol," in *Herausforderungen des staatlichen Gewaltmonopols: Recht und politisch motivierte Gewalt am Ende des 20. Jahrhunderts*, ed. Freia Anders and Ingrid Gilcher-Holtey (Frankfurt/M.: Campus, 2006), 25–6.
34 The classical post-9/11 example is the frequently repeated claim that it is necessary to sacrifice freedom for security based on a real or imaginary threat of terrorist attacks. The real threat, however, seems to lie in undermining democratic rights rather than in terrorism. Closer to our topic are frequent claims about the need to sacrifice (democratic) rights for economic development and growth. For a critique of such claims, see Robert E. Goodin, "The Development-Rights Trade-off: Some Unwarranted Economic and Political Assumptions," *Universal Human Rights* 1, no. 2 (1979): 31–42.
35 Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton: Princeton University Press, 1996), 30, 70, 71, 91.
36 Ibid., 65.

civil unrest throughout history. Consequently, it is not surprising that one finds relatively early arguments that formulate the moral right to subsistence, as, for instance, in late medieval scholastic literature.[37]

Of greater political relevance are discourses that relate a ruler's disregard of his subjects' moral right to subsistence to the subjects' (moral) right to disobedience, although these arguments formulate this point only implicitly as an issue of rights and explicitly as an issue of the ruler's neglected duties, which essentially means stripping the ruler's legitimacy. Two relatively early examples can be found in the fourteenth-century political thinkers William of Pagula and Ibn Khaldun.[38]

Of course, neither William of Pagula nor Ibn Khaldun argues in the intellectual framework of normative political theory or philosophy in the liberal tradition of the modern constitutional state. The concept of *rights* leads a shadow existence. Consequently, it might be considered an unforgiveable anachronism to relate the discourses of these thinkers to a contemporary discourse on rights. However, if one considers a peasants' rebellion, whether in twelfth-century Egypt or in France, in which peasants protest against their unbearable living conditions, their actions imply an assumed subjective moral right to rebel to restore acceptable living conditions, even though the dominant discourse is duty bound. In this sense, the application of an anachronistic concept can be utilized to foster understanding instead of hindering it. Again, is it allowed? Yes, it is. As Georges Duby has noted, "[a]ll things considered, I believe the question can be answered in the affirmative. It was no more legitimate for historians to apply, say, the concept of class struggle to the feudal era, yet it has proved undeniably useful that they have done so."[39]

Nonetheless, to continue with our previous example, William of Pagula and Ibn Khaldun are bound to their religious-cultural experience and would be neither willing nor able to follow in the application of an anachronism as an analytical tool. Their normativity has different roots in religion and custom. They rely on a normativity that is prior to political rule and that is dismissed, at least in the

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37 Virpi Mäkinen, "Rights and Duties in Late Scholastic Discussion on Extreme Necessity," in *Transformations in Medieval and Early-modern Rights Discourse,* ed. Virpi Mäkinen and Petter Korkman (Dordrecht: Springer, 2006), 41.

38 Bettina Koch, "A Medieval Muslim-Christian Lesson on Political and Economic Liberalization," *Journal of Chinese, Indian, and Islamic Cultural Relations* 1 (2008): 73–88. For William of Pagula's argument, see also Cary J. Nederman, "Property and Protest: Political Theory and Subjective Rights in Fourteenth-Century England," *The Review of Politics* 58 (1996): 323–344.

39 Georges Duby, "Preface," in *A History of Private Life, Vol. II: Revelations of the Medieval World*, ed. Georges Duby (Cambridge: Harvard University Press, 1988), ix.

Benthamian utilitarian tradition, as an "ontological luxury" that relies on "ghostly entities."[40] Nonetheless, the underlying problem these thinkers address is similar to Dworkin's concern: what are the duties of a ruler/government to the people, and how are these duties related to the rights of the people? When does legitimate rule become illegitimate rule that makes obedience no longer mandatory? Even if one had the chance to present the normative argument of the liberal tradition to these thinkers, and even if they could follow the argument intellectually, it is doubtful that they would be willing to accept it. The liberal reasoning in the context of the modern constitutional state does not fit their historical and cultural experiences. One reason for this misunderstanding lies in a peculiarity of modern legitimacy, as identified by Wilhelm Hennis:

> The insignia of modern legitimate rule is that it is based upon 'penultimate foundations': legal procedures, specific forms of rule, 'rights'. Their ultimate orientation frees them, but also presupposes them: they are redirected to the ambience of the moral quality of social order. [...] The legal order presupposes the existence of moral law [*Sittengesetz*]; it sets a limit to the scope of legal action, but it is neither in the public nor in the private sphere its legal basis.[41]

By contrast, in a premodern European historical-cultural context (and in most other contexts outside the Western world), political legitimacy is tied to an ultimate foundation—in most instances, a divine one. However, regardless of whether legitimacy is tied to religious belief or to a liberal understanding of morality, government must operate with the recognition of the people's *Sittengesetz* and not outside of it. Consequently, Hennis's suggestion that a real "crisis of legitimation takes the form of a conflict of legitimacy, a moral doubt [*sittlicher Zweifel*] of the possibility of continuing obedience to the legal ruler,"[42] points to the core of the problem and corresponds to his doubts about the possibility of "a *general* theory of legitimacy applying to all developed cultures, a concept of legitimacy that is of practical critical and normative utility and which could help us in telling right from wrong in our world."[43]

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40 Dworkin, *Taking Rights Seriously*, xi.

41 Wilhelm Hennis, "Legitimacy: On a Category of Civil Society," in Wilhelm Hennis, *Politics as Practical Science* (Basingstoke: Palgrave Macmillan, 2009), 101. For the original German, see Wilhelm Hennis, "Legitimität: Zu einer Kategorie der bürgerlichen Gesellschaft," in Wilhelm Hennis, *Politikwissenschaft und politisches Denken: Politikwissenschaftliche Abhandlungen II* (Tübingen: Mohr Siebeck, 2000), 250–296.

42 Ibid., 84.

43 Ibid., 102. The view proposed by Wilhelm Hennis complies with Alastair MacIntyre, *After Virtue: A Study in Moral Theory,* 3rd ed. (Notre Dame: University of Notre Dame Press, 2007), 67.

The core of Hennis's exploration on legitimacy is the transition from an order perceived as legitimate to illegitimate, which is also central for the eminent Latin American philosopher Enrique Dussel, who analyzes the problem of legitimacy in periphery countries and with respect to disadvantaged minorities in industrialized countries. Like Hennis, he discusses legitimacy by contrasting himself from Weber and Habermas. He grounds his argument in the distinction between coercion (legitimate) and violence (illegitimate). Contrary to Henry Shue, who acknowledges the existence of rights even if the people possessing them are not aware of them, Enrique Dussel concerns himself with the impact on legitimacy if formerly marginalized "new emerging social subjects" discover new rights.[44] At this moment,

> [a]ny use of force *against the new rights*, which revealing themselves historically and progressively in the very eyes of the victims, will no longer be for them "legitimate coercion" but strictly violence: use of force against the right of the Other, without any validity or objective quality (being the destructive force of the "exclusive reproduction" of the system in force, not the reproduction and development of human life).[45]

Here, an unavoidable conflict emerges between the victimized and the dominant system. "[T]he dominant system becomes intolerable [...] because of the existence of victims on a massive scale, its intrinsic impossibility [...] becomes a conscious reality in the critical consciousness of the community of victims."[46] At the same time, the dominant system insists on maintaining the existing order, although the previous foundation of legitimacy has vanished.

Dussel's underlying assumption that legitimacy depends on perspective as well as on historical and socio-economic circumstances is in keeping with Wilhelm Hennis's thesis that a general theory of legitimacy is an impossibility. For Hennis, who does not reflect explicitly on periphery states but primarily on premodern Europe, most real crises of legitimacy originate in conflicts about religion and skin color that "ultimately [rest] on faith and superstition."[47] This leads to the question: what is different if political legitimacy does not follow the logic of the modern liberal nation state but rather rests on religion. To put it differently by rephrasing Hennis, what has changed if the conflict of legitimacy takes the form of *religious* doubt about the possibility of continuous obedience to the legal ruler? This is certainly a problem in all states and political systems of

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44 Enrique Dussel, *Ethics of Liberation: In the Age of Globalization and Exclusion* (Durham: Duke University Press, 2013), 407.
45 Ibid., 401–2. Emphasis in the original.
46 Ibid, 416.
47 Hennis, "Legitimacy," 91.

rule in which religion is used as at least one source (if not the only source) of legitimacy. On the surface, it does not seem to make a difference whether moral doubts are based on religious belief or on a post-enlightenment morality.

1.2 Religion and Political Legitimacy

If religion is the main source of political legitimacy in the way that one can speak of a theocratic state or a religious nomocracy, state-sponsored religious affiliation means (political) allegiance with the regime. As Larry Catá Backer puts it, "religious affiliation becomes the marker for full political citizenship."[48] In its extreme version, and in reverse perspective, this concept of political legitimacy implies unequal treatment of individuals or groups depending on their existent or nonexistent affiliation with the privileged religion. Whether portrayed in religious or secular terms, the unequal treatment of parts of the people boils down to a problem of minority rights. Although the recognition of minority rights, as Will Kymlicka notes, is "a legitimate component of the liberal tradition,"[49] disregard or suppression of religious or ethnic minorities is a source of violent conflict. The emphasis lies on the oppression of *minorities*, not on religion. Religion, hovever, can be and has been used throughout the centuries as a justification to oppress or even kill political opponents.[50]

Yet, the problem related to political legitimacy tied to religious belief is deeper and more complex than potential (violent) conflicts with minorities may imply. Religious legitimacy suffers under the inherent conflict between political necessity and religion's moral standards. In this conflict, governments "are ill-equipped to win" because if a government is "setting itself up as the guardian of the faith, the government invites itself to be judged by its fidelity to it."[51] In other words, if a government has to act on political necessity but in potential conflict with religious law or faith, it may jeopardize its legitimacy in

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[48] Larry Catá Backer, "Theocratic Constitutionalism: An Introduction to a New Global Ordering," *Indiana Journal of Global Legal Studies* 16 (2009): 133.

[49] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), 50.

[50] Mohamed Charfi, *Islam and Liberty: The Historical Misunderstanding* (London: Zed Books, 2005), 50–1. See also Bettina Koch, "Religious Dissent in Premodern Islam: Political Usage of Heresy and Apostasy in Nizam al-Mulk and Ibn Taymiyya," in *Religion, Power and Resistance from the Eleventh to the Sixteenth Centuries: Playing the Heresy Card*, ed. Karen Bollermann, Thomas M. Izbicki, and Cary J. Nederman (Houndmills: Palgrave Macmillan, 2014), 215–236.

[51] Tarek E. Masoud, "The Arabs and Islam: The Troubled Search for Legitimacy," *Daedalus* 128, no. 2 (1999): 128–129.