Editor's Introduction to the Special Issue

by Hedayat Heikal, Special Issue Editor

This special issue of the *Journal of Islamic Law* started with one question: how do Islamic legal traditions, whether in theory or in practice, inform contemporary debates on racial justice and equality, particularly with the notable rise of mass incarceration? Exploring this question appeared to us critical in several respects. First, race continues to be a major fault line in today's world—W. E. B. Dubois's color line persists. Race also continues to affect the way Black people and other people of color—including many Muslims—are treated on a day-to-day basis. Second, the Black Lives Matter moment brought realist approaches to law out of law reviews and into the mainstream conversation through its focus on structural inequalities, mass incarceration, and the policing of communities of color and immigrants in the United States. No matter what law *said* it did, one had to look at what it *actually* did to affect (different segments of) society. Third, Muslims, be it in the United States or in the Global South, were not simply subjects or victims of the law or of its systems. We recognized that they are actors shaping the course of the developments in law and society that touch on racial equality, criminal justice, and equality; and they sometimes draw on Islamic traditions in doing so. We sought to examine how.

The three Essays in this Special Issue of the *Journal* examine some of these Islamic "traditions of action" and how they bear on questions of racial justice and equality today. **Adnan Zulfiqar** shows us that fierce critiques of incarceration can and do exist outside of the United States in his essay *The Immorality*

of Incarceration: Between Jāvēd Aḥmad Ghāmidī and Angela Y. Davis. Zulfiqar focuses on the work of one prominent jurist and Islamic public intellectual in contemporary Pakistan, Jāvēd Ghāmidī, which he juxtaposes with the well-known public intellectual in the contemporary United States, Angela Davis. He posits that prominent prison abolitionists in the U.S. context argue against incarceration because of its historic roots as a tool of racial violence and its disproportionate impact on minority groups. By contrast, Ghāmidī's argument against incarceration is directed against the very institution of prison. In this sense, his is primarily a conceptual moral critique. The moral critique is rooted in the ways in which long-term confinement harms the person and the community while not offering a plausible path to rehabilitation. The historical and moral critiques of prison meet at abolition, but Zulfiqar offers new pathways for exploring how and why the one might offer insight and strength to the other in ways that American and Islamic arguments for abolition have not fully explored.

SpearIt's essay, *Muslims in American Prisons: Advancing the Rule of Law through Litigation Praxis*, brings into focus the efforts of Muslims "resisting" conditions of long-term confinement through litigation in the United States. The Essay reminds the reader that lawsuits by Black Muslims in the 1960s (chief among them, *Cooper v. Pate*) were at the foundation of the modern prisoners' rights movement. *Cooper* was no less than the *Brown v. Board of Education* for prisoners' rights—"although a *per curiam* opinion, lacking the powerful language of *Brown v. Board of Education,* [*Cooper*] left no doubt that prisoners have rights that must be respected."[1] Surveying the impact of *Cooper* and other lawsuits that followed it on the treatment of not just Muslim prisoners, but all prisoners, and on the contours of American law more broadly, SpearIt argues that Muslim prisoners pursuing litigation have done so out of a sense of Islamic/religious obligation. This religious motivation is clearly on display when litigation involves a Free Exercise claim. But the author also shows it to be on display in two other senses: where

1 James B. Jacobs, *The Prisoners' Rights Movement and Its Impacts, 1960–80*, 2 Crime & Just. 429, 440 (1980).

a religious movement, such as the Nation of Islam in the 1960s, encourages and supports such litigation; and where religion is motivating the protagonists to take a stand for justice. With these examples, SpearIt shows how litigants draw on Islamic traditions of action to advance the rule of law.

In the third and final essay, *Shīʿī Ideas of Slavery: A Study of Iran in the Qājar Era Before and After the Constitutional Revolution*, **Seyed Masoud Noori** and **Zahra Azhar** turn our gaze to the debate on the abolition of slavery in nineteenth-century Iran. Noori and Azhar argue that the Shīʿī Islamic legal tradition perceived slavery to be permissible (halal), which led its supporters to oppose British pressure for the abolition of slavery. Some scholars admitted that the trading of enslaved people was legally questionable or "abominable" (*makrūh*), yet they saw no contradiction in sanctioning the institution of slavery itself. This approach to *sharīʿa* survived the upheaval of Iran's turn-of-the-century Constitutional Revolution well after the shah, Iran's ruler at the time, had abolished the importation of enslaved people via maritime routes. The approach also persisted even after fundamental rights, such as freedom and equality, entered the vocabulary of political and nationalist contestation. Noori and Azhar analyze the works and correspondence of prominent *mujtahidīn* (expert jurists) of the Constitutional Era, focusing on Shaykh Muḥammad Kāẓim Khurāsānī and Shaykh Muḥammad Ḥusayn Nāʿīnī Gharavī,who supported the Constitutionalist cause.While *mujtahidīn* on the side of the Constitutionalists argued that freedom and equality are authentic Islamic legal principles, these principles did not influence their positions on the question of slavery, such that they found slavery to be, at most, disfavored,yet still permissible. It was not until modern times that slavery was outlawed.

Where Zulfiqar and SpearIt identify Islamic traditions of action that challenge incarceration, racial inequity, and the status quo, Noori and Azhar identify an Islamic tradition that preserved a historical status quo and justified an abominable practice of which the vast majority of Muslims in Iran (and elsewhere) disapprove. This palpable disconnect between text and context reminds us of why the study of Islamic legal traditions as they

pertain to racial justice and equality and to a variety of other contemporary problems of law and society must be construed broadly to encompass *sharīʿa* in principle and *sharīʿa* in action, text and context, Islam and Muslims. The lived experiences of Muslims and their productions of meaning is of no less interest than Islam's legal-doctrinal and historical sources.[2]

2 This understanding of "Islamic" invokes Shahab Ahmed's view that actors produce Islamic meanings by way of "hermeneutical engagement with the Pre-Text, Text, and Con-Text of the Revelation to Muhammad." Shahab Ahmed, What is Islam? 363 (2015).