Editor's Introduction to the Special Issue

Between Divine Mandate and Modern State: Islamic Criminal Law and the Contested Legacy of *Ḥudūd*

By Bahman Khodadadi*
Research Fellow, Program in Islamic Law

Rarely does any aspect of Islamic law command such global attention or stir such deep internal controversy as the *ḥudūd* punishments. Anchored in scripture and charged with moral gravity, these punishments occupy a complex space where divine authority, political power, and human suffering intersect. What does it mean to treat certain punishments as sacred and immutable in an era increasingly shaped by demands for human rights, rehabilitation, and legal reform? Do these ostensibly immutable decrees uphold the true spirit of justice, or do they entrench an unforgiving orthodoxy that resists ethical evolution? How have political regimes mobilized *ḥudūd* punishments to assert religious legitimacy or consolidate power? Can a faithful reading of Islamic tradition allow for the reinterpretation—or even suspension—of *ḥudūd* in light of present-day ethical concerns?

As these questions suggest, this volume aims to illuminate the theoretical foundations and practical realities of *ḥudūd* law, explore possibilities for a moratorium on *ḥudūd*

* Disclosure: In drafting this introduction, I occasionally used AI for proofreading purposes.

punishments, and offer an interdisciplinary examination of this complex and contested issue. The contributions critically engage with juristic, political, sociological, and theological discourses surrounding the implementation of *ḥudūd* punishments in the modern era. These analyses encompass interpretations of the Qurʾān and *ḥadīth*, while also addressing the conceptual tensions and practical obstacles involved in the suspension or application of *ḥudūd* laws across a range of legal and political contexts, including those of Indonesia, Iran, Morocco, Pakistan, and Saudi Arabia.

The term *ḥudūd* (sing. *ḥadd*) refers to certain major crimes and their prescribed punishments in Islamic criminal law. The punishments include such severe penalties as flagellation, amputation, and capital punishment. According to Islamic legal theory, *ḥudūd* laws are understood to have been directly specified by God in Islam's foundational texts, the Qurʾān and the Sunna.[1] Historically, as Intisar A. Rabb observes, "[f]or Muslims, Sunnīs and Shīʿa alike, *ḥudūd* laws represented a subset of divine legislation, the expression of which the Prophet and other authority figures were merely a conduit."[2] Many—though not all—Muslim jurists, particularly in the modern world, maintain that "*ḥudūd* laws were so explicit and specific that adherence to them provided a prime example of upholding divine legislative supremacy."[3]

Despite their seemingly fixed, severe, and divinely ordained nature, *ḥudūd* punishments have traditionally been exceedingly difficult to implement in practice, owing to the stringent procedural requirements established by Islamic law. Islamic law traditionally establishes rigorous procedural safeguards surrounding the implementation of *ḥudūd* punishments, including exceptionally high evidentiary standards and the restrictive legal canon to "avoid punishment in cases of doubt" (the "doubt canon").[4] Khaled Abou El Fadl underscores this point, noting

1 Intisar A. Rabb, Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law 29 (2015).

2 *Id.*

3 *Id.* at 30.

4 *See* Rudolph Peters, Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century 53–65 (2005).

that "the classical jurists were keenly aware that to the extent possible, an Islamic judicial system ought to avoid applying the *ḥudūd* punishments."[5] He further explains:

> *[Ḥ]udūd* punishments were hardly ever implemented in Islamic legal history, for the most part because Muslim jurists made the evidentiary requirements and the technical pre-conditions for the enforcement of the *ḥudūd* practically impossible to fulfill or because they admitted so many mitigating factors to the point that only a criminal who was most determined to be punished could be made to suffer the *ḥudūd* penalties.[6]

Broadly speaking, the scholarly discourse on *ḥudūd* laws today delineates a tripartite scheme: at one end stand the pro-*ḥudūd* scholars (retentionists), at the other, their counterparts who categorically oppose the application of such penalties (abolitionists), and in between, a middle group of scholars who advocate for limiting or significantly reducing their implementation (reductionists). In what follows, I focus primarily on the retentionist position, as the contributions to this volume largely espouse perspectives in opposition to *ḥudūd* laws.

Retentionists view *ḥudūd* punishments as integral to the Islamic legal and moral framework, grounded in four key rationales. First, they see *ḥudūd* laws as effective deterrents against serious crimes, intended to maintain public order and curb socially harmful behavior.[7] Second, they view *ḥudūd* laws as divinely ordained limits that serve to uphold justice and safeguard core communal values.[8] Third, they understand *ḥudūd* laws as instruments of moral purification, facilitating spiritual

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For an in-depth legal-historical discussion of the "doubt canon," see Rabb, *supra* note 1, at 4.

5 Khaled Abou El Fadl, *Qurʾanic Ethics and Islamic Law*, 1 J. Islamic Ethics 7, 18 (2017).

6 *Id.* at 17.

7 *See, e.g.*, *Ijrā-yi ḥudūd ba jāmiʿ-i ārāmish mīdahad* [The implementation of *ḥudūd* brings peace to society], Iranian Students' News Agency (June 29, 2018), https://www.isna.ir/news/97030905005/.

8 *See, e.g.*, Abdulreza Jafari & Javad Sadati, *Aẓimat-i namādīn-i ḥudūd va mavāniʿ-i ijrāyi*, 18 Faslnāma-yi didgāhāy-i ḥuqūq -i qazā-yi 67, 74–77 (2013).

cleansing for both the individual offender and the wider society.[9] Fourth, and perhaps most distinctively, retentionists regard *ḥudūd* laws as symbolic affirmations of a legal order grounded in divine authority, rather than one shaped by human discretion or secular norms.[10] On this view, enforcement of *ḥudūd* laws is not merely a matter of legal policy but a religious imperative that fulfills "God's rights."[11]

This final rationale diverges sharply from the preceding ones in its deontological foundation. Whereas the first three justifications rest on largely consequentialist grounds—emphasizing tangible outcomes such as deterrence and crime prevention, the protection of societal values, or the moral purification of individuals and communities—the fourth justification (that views *ḥudūd* laws as symbolic affirmations of a divine legal order) is rooted in an unwavering theological and jurisprudential commitment. Retentionists who invoke this rationale do so on the basis of scriptural interpretation, classical legal precedent, and doctrinal fidelity.[12] Accordingly, and as I have argued elsewhere, *not all* retentionist positions are reducible to political or ideological motivations; many stem from a principled and conscientious reading of religious obligation.[13]

On the other hand, critics of *ḥudūd* punishments offer a variety of objections. Internally, some scholars argue that the *ḥadd* punishment for theft is irrational from a deterrence

9 *Id.* at 76.

10 Bahman Khodadadi, On Theocratic Criminal Law: The Rule of Religion and Punishment in Iran 108–109 (2024).

11 Rabb, *supra* note 1, at 29. *See also* Intisar A. Rabb, *The Islamic Rule of Lenity: Judicial Discretion and Legal Canons*, 44 Vand. L. Rev. 1299, 1315–16 (2021).

12 *See* Mohammad-Hasan Najafi, Jawāhir al-kalām 319 (2013); Mohammad Ardebili, 7 Majmaʿ al-fāʾida wa-l-burhān fī sharḥ al-Azhān 547 (1982). The Shīʿī jurists who favor the implementation of *ḥudūd* during the Occultation include Shaykh al-Mufīd (d. 412/1022), Shaykh al-Ṭūsī (d. 459/1067), al-Shahīd al-Awwal (d. 786/1385), al-Shahīd al-Thānī (d. 965/1557), Mullāh Aḥmad Narāqi (d. 1244/1829), Sāheb-i Jawāhir (d. 1265/1849), Kāshif al-Ghiṭāʾ (d. 1373/1954), Ayatollahs Rūḥollāh Khomeini (d. 1409/1989), Abū al-Qāsim Khūyī (1390/1970), Mohammad-Reza Golpāygāni (d. 1412/1992), and Mīrzā Javād Tabrīzī (d. 1412/2006).

13 For further discussion on the deontological argument, see Bahman Khodadadi, *Between Orthodoxy and Reform: Theorizing the Suspension of Islamic Corporal Punishments in Shiʿi Theocracy*, 41 J.L. & Relig. (forthcoming 2025) (manuscript at 17–23) (on file with author).

perspective, as it fails to reduce criminal behavior or enhance social order as intended.[14] Others distinguish between core Islamic principles and specific historical applications, contending that certain provisions, such as the *ḥudūd* laws outlined in the Qurʾān and *ḥadīth*, are not central to Islam's essence and could be replaced by more dignified forms of punishments.[15] Another group emphasizes the importance of contextual analysis, suggesting that a careful reading of Qurʾānic verses related to *ḥudūd* laws reveals room for implementing modern penal methods while remaining faithful to the divine commandments and their underlying purposes.[16] Finally, some scholars argue that *ḥudūd* punishments conflict with modern conceptions of justice and human dignity, viewing them as forms of state-sanctioned punitive violence that undermine moral autonomy and contribute to the normalization of violence.[17] They warn of the potential decivilization of public sensibilities, the ethical desensitization of society, and the moral corruption of spectators exposed to such public spectacles.[18]

Although one might conceive that opposition to *ḥudūd* punishments stems primarily from Western liberal or secular paradigms, it is important to recognize that resistance to these penalties is not exclusively a Western phenomenon. As the foregoing discussion shows, a robust and expanding body of critique is emerging within Muslim communities themselves—including in Muslim-majority nations. Indeed, several contributors to this volume embody this internal critique, offering nuanced analyses grounded in *sharīʿa*-based interpretive frameworks and reformist methodologies intrinsic to the tradition. For example, Amin Radmand and Mohsen Borhani, in their article, "An Intrinsic Sharīʿa-Based Approach to Reducing *Ḥudūd* Capital Punishments in Iran," highlight the potential within Shīʿī jurisprudence

14 *See, e.g.*, Moamen Gouda, *Stealing More Is Better? An Economic Analysis of Islamic Law of Theft*, 42 Eur. J. L. & Legal Econ. 103, 124–25 (2015).

15 *See, e.g.*, Liyakat Takim, Shiʿism Revisited: Ijtihad and Reformation in Contemporary Times 42 (2022).

16 *See, e.g.*, Wayel Azmeh, *Corporal Punishment Verses in the Qur'an are to be Reinterpreted to Counter Violent Extremist Practices from Within the Islamic Juristic Tradition*, 24 Dig. Middle E. Stud. 161, 163 (2015).

17 *See* Khodadadi, *supra* note 10, at 242–51.

18 *Id.* at 243.

to significantly lower execution rates while remaining within the framework of *sharīʿa*. Another such critique is found in Zubair Abbasi's article, "Tendering Divine Justice: The Impact of Islamic Criminal Laws (*Ḥudūd*) on Children's Rights in Pakistan," which explores the consequences of laws like Pakistan's Zina Ordinance (laws criminalizing extramarital sex) on children's rights. Abbasi emphasizes the need for robust procedural protections within Pakistan's dual legal system, thereby demonstrating how the integration of Islamic and common law principles can safeguard vulnerable groups.

Such internal discourse reveals a complex navigation of ethical principles, textual interpretation, and practical considerations within Muslim communities themselves. This discourse further highlights ongoing processes of interpretation, negotiation, and evolution within Islamic theological, legal, and ethical thought.[19] These diverse approaches demonstrate the vibrant intellectual engagement with *ḥudūd* reform in Islamic scholarly circles. They challenge simplistic characterizations of *ḥudūd* law as static or unreformable.

Articles and essays in this volume—a total of eight contributions—add to this internal discourse by exploring several important issues, including the impact of *ḥudūd* laws in specific jurisdictions; the complex interaction between Islamic law, customary law, and state law; and the ways in which reform can be pursued through internal dynamics within Muslim communities.

Contributing Articles & Essays

The articles and essays featured in this volume constitute a significant contribution to the ongoing debate surrounding the implementation of *ḥudūd* punishments. These works engage deeply with the multifaceted discourse on this complex topic, offering diverse perspectives, challenges, and critiques. Nevertheless, as editor of this volume, I must acknowledge that the collection does not include contributions representing what I have earlier

19 *See* Sherman A. Jackson, The Islamic Secular (2024); Tariq Ramadan, Radical Reform: Islamic Ethics and Liberation (2009); Abou El Fadl, *supra* note 5.

in this introduction called the retentionist position. While this volume also lacks contributions advocating an explicitly abolitionist view, the critical perspectives offered here should still be understood, from a general theoretical standpoint, as opposing the retentionist approach. As such, it must be acknowledged that the ideal dialectic between thesis and antithesis—fundamental to robust intellectual inquiry and the development of synthesis—has not been fully realized in this volume. Recognizing this representational gap, I nonetheless view this volume's contribution not primarily as an effort to present balanced opposing views, but rather as an opportunity to explore the nuanced arguments advanced by critics to *ḥudūd* laws in greater depth. Taken together, the contributions reveal *ḥudūd* laws to be a juridical site where multiple discourses intersect. The volume thus provides a valuable platform for rethinking the conceptual boundaries of Islamic criminal law and invites further inquiry into how these boundaries are negotiated across time, space, and tradition. Like Kafka's parable of the gate of law, *ḥudūd* remains visible yet elusive, inviting some to approach, others to retreat, and many to argue endlessly over who may enter and by which reading. This volume, at the very least, opens the door a little wider.[20]

Muhammad Zubair Abbasi's (Royal Holloway, University of London) article, "Sacred Texts and Profane Realities: Islamic Criminal Laws (*Ḥudūd*) and Children's Rights in Pakistan," underscores the vital importance of procedural safeguards and legal certainty in protecting children's rights within Pakistan's hybrid legal system, which blends Islamic law with common law traditions. The article examines Pakistani court judgments involving children under the Zina Ordinance. Abbasi raises concerns about the lack of clarity in defining legal adulthood, which hinges on either a statutory age limit or the attainment of puberty, as well as the legal validity of "consent" on the part of minors. He also explores the courts' tendency to exercise leniency toward juvenile offenders, noting that courts frequently mitigate sentences for minors based on their youth and prospects for rehabilitation. Ultimately, the article calls

20 *See* Franz Kafka, The Trial (Idris Parry trans., Penguin Classics, 2024) (1925).

for stronger procedural protections and greater legal clarity to safeguard vulnerable populations—particularly children and women—from the risks posed by the politicized application of *sharīʿa*-based criminal laws.

Mohsen Borhani's (University of Tehran) and **Mohammadamin Radmand**'s (independent researcher) article, "An Intrinsic *Sharīʿa*-Based Approach to Reducing *Ḥudūd* Capital Punishments in Iran," explores the relationship between Iran's criminal laws, which are rooted in Shīʿī *fiqh*, and the country's high execution rates. They argue that, because Iran ranks among the highest in global executions, many attribute this trend to the application of *ḥudūd* punishments and call for their wholesale abolition as a result. Objecting to this view, the authors argue that wholesale abolition would contradict the values of Iran as an Islamic society. Instead, the authors adopt a modest and minimalist approach, highlighting the potential for Shīʿī jurisprudence to substantially reduce execution rates while remaining faithful to the broader framework of *sharīʿa* generally and, more specifically, to Shīʿī *fiqh*. The authors argue that the plurality of *fatwā*s and the interpretive flexibility on grounds of Islamic legal consensus offer Iran, as a Shīʿī theocracy, a viable path to uphold Islamic principles while addressing the problem of excessive capital punishment.

Hazim H. Alnemari's (Islamic University of Madinah) article, "God's Law, King's Court: *Ḥudūd* Jurisprudence under Saudi Monarchical Decrees," illustrates how top-down monarchical reform in Saudi Arabia reflects not only legal transformation but also the practical limits of *ḥudūd* law-enforcement in contemporary governance. Alnemari concentrates on significant changes introduced in Saudi criminal law in 2018 and 2019, namely, the elimination of criminal convictions based on doubt (*al-ḥukm bi-l-shubha*) and the abolition of discretionary flogging (*al-taʿzīr bi-l-jald*). He situates these reforms within a broader royal initiative to modernize the justice system. Through a detailed examination grounded in Sunnī *fiqh*, the author explores the complexities of enforcing *ḥudūd* penalties, the interpretive flexibility that can lead to inconsistent rulings, and the tensions between *ḥudūd* penalties and discretionary punishments.

Alnemari argues that Saudi Arabia's royal decrees reflect a nuanced and evolving approach to *ḥudūd* jurisprudence—one that posits the necessity of both judicial interpretation and royal authority to ensure more just and context-sensitive applications of Islamic law.

Tabinda Mahfooz Khan's (El Colegio de México) article, "Public Debates on *Sharīʿa* and the 'Savages-Victims-Saviors' Metaphor of Human Rights: The Case of the Hudood Ordinances and Their Reform in Pakistan, 1979–2010," critiques the fractured discourse between judicial interpretations and polarized public debates that, in her view, reproduce orientalist tropes against Islamic law. Khan's contribution delves into the relationship between *fiqh*-based laws and constitutional liberalism in Pakistan, particularly since 1982. She argues that Pakistan's legal-political elite has failed to engage with the *madrasa*-educated *ʿulamāʾ* (scholars) on their own *fiqh*-based terms, and that this disconnect impedes *ḥudūd* reform and perpetuates stereotypes surrounding *ḥudūd* laws and punishments. Khan further explores the ways in which Islamic jurisprudence has historically influenced Pakistan's legal system, particularly in areas concerning civil liberties, women's rights, and the judiciary. While Khan maintains that Islamic legal tradition holds the *potential* to align with democratic principles and individual rights, she contends that this possibility is often lost in both national and global debates. By tracing the evolution Islamic criminal law in Pakistan and the reform efforts it has inspired, her article sheds light on the enduring challenges of reconciling Islamic law with contemporary democratic values.

Anggi Azzuhri's (Universitas Islam Internasional Indonesia) article, "Regulating Crimes under Muslim Law and European Civil Law Framework in Indonesia: Lottery Gambling as a Case Study," examines the prohibition of the national lottery in Indonesian law. He asks how both Islamic (particularly Shāfiʿī jurisprudence) and secular legal traditions shape the country's stance on gambling. Azzuhri argues that what he calls "Muslim law" (as distinct from *sharīʿa*) allows flexibility in Indonesia's pluralistic legal framework. Moreover, he argues that the integration of customary law with Islamic legal principles has facilitated

the incorporation of Muslim moral values into the national legal system, particularly in the criminalization of gambling. For him, customary law functions as a flexible, public interest-driven framework that complements Islamic law and political goals. This fusion gives rise to the hybrid concept of "Muslim law," through which Islamic norms influence the secular legal code. Azzuhri suggests that this model of legal pluralism can offer valuable insights for rethinking the application of *ḥudūd* in Muslim-majority countries with dual legal systems.

Mohamed Mitiche's (University of Johannesburg) article, "A Decolonial Critique of the *Maqāṣid*-Based Approach to the *Sharīʿa*: The Call for a Moratorium on the *Ḥudūd*," critically examines reformist discourse surrounding Islamic criminal law, particularly the emphasis on *maqāṣid al-sharīʿa* (objectives of Islamic law) as a tool for justifying the suspension of *ḥudūd* punishments. Mitiche contends that such reform efforts, while framed as progressive, often reproduce colonial epistemologies by positioning *ḥudūd* laws as the central issue in Islamic law needing correction. He argues that this misguided focus reveals a form of epistemological capture by colonial narratives of Islamic law. Rather than viewing *ḥudūd* laws merely as violent relics of Islamic tradition, he calls for understanding their symbolic, ontological, and eschatological dimensions. He asserts that *ḥudūd* punishments represent a theologically grounded vision of public morality and ethical formation—one that cannot be dismissed without engaging their deeper philosophical underpinnings. According to Mitiche, the fixation on *ḥudūd* laws within reformist and rights-based frameworks reveals more about the desire to manage and render violence acceptable than about the actual elimination of violence itself. In this light, the call for reform is less about justice within Islamic law and more about conformity to dominant global norms. The article ultimately invites readers to reconsider how critiques of *ḥudūd* laws are entangled with broader hegemonic structures and to question the uncritical adoption of human rights frameworks in Islamic legal thought.

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In this Special Issue of the Journal's Forum, where authors write shorter essays on the thematic issue of ḥudūd *laws, three authors offer additional perspectives on Islamic criminal law reform today. Two shorter essays explore discrete issues through case studies, and offer specific proposals for such reforms in Iran and Morocco.*

Hamidreza Asimi's (University of Tehran) and **Jamshid Gholamloo**'s (University of Turin) essay, "Reassessing *Baghy* in Islamic *Fiqh*: Legislative Discrepancies and Normative Alternatives," explores the implications of a major legal development in Iran's 2013 Islamic Penal Code. This revised criminal code, for the first time, classified *baghy* (armed rebellion) as a *ḥadd* crime carrying the death penalty for acts deemed to threaten the Islamic Republic. This reclassification, the authors argue, departs from the established interpretations within classical Shīʿī law. As a result, they argue, the departure introduces conceptual and legislative ambiguities, stretches the traditional bounds of Islamic criminal law, and complicates its enforcement in practice. Drawing from both ethical and Islamic legal principles (based in *fiqh*), the authors propose reforms to the current laws, involving negotiation and reconciliation in place of reclassification of rebellion as a *ḥadd* crime. By aligning legal reforms with rights standards rooted in both *sharīʿa* and international human rights norms, this article calls for a nuanced approach that addresses the ethical concerns surrounding the current penal code. Through this lens, the authors present a compelling case for rethinking how Islamic legal systems might respond to political dissent without resorting to the harshest penalties.

Yannis Mahil's (GISTU University) essay, "Contemporary Mechanisms to Reform Islamic Criminal Law: Between Legal Doctrine and Positive Law – The Case of Morocco," explores the evolving landscape of Islamic criminal law in Morocco. Mahil highlights how scholars and legal practitioners are increasingly employing nuanced hermeneutical methods such as "contextual and eclectic *ijtihād*" to move beyond rigid legal formalism. He contends that this shift reflects an effort to adapt Islamic legal principles to modern legal frameworks, aligning them more closely with human rights norms and contemporary

social expectations. A key strategy has been reclassifying *ḥudūd* offenses as *taʿzīr* offenses, effectively secularizing Islamic criminal law while maintaining its religious legitimacy. Taking Morocco as a case study, the author discusses the ways in which its legal system blends Islamic law and Western influences, leading to the secularization of certain traditional crimes while retaining the notion of "Islamic offenses." Mahil also explores Morocco's evolving stance on the death penalty, especially in the context of its recent support for a UN global moratorium, and argues that such developments reflect broader tensions between Islamic legal traditions and modern human rights discourse. The essay ultimately highlights the complex negotiations at play as Muslim-majority states seek to remain grounded in their legal-religious heritage while responding to changing global legal and moral expectations.