



Akademik Eğitim ve Sosyal Bilimler Dergisi (AJESS Journal)

The Objectives of Islamic Criminal Sanctions in Ibn al-‘Arabī’s al-Qabas and Their Role in Refuting Contemporary Objections : A Foundational Study in the Objectives of the Sharī‘a

PhD Candidate; Mounia Tessa, University of Algiers 1, m.tessa@univ-alger.dz
Prof. Dr: Djamel Kerkar, University of Algiers 1, kjame1963@yahoo.fr

Article History

Received: 31/07/2026; Accepted: 24/08/2026; Published: 25/09/2026

Abstract

This study examines the objectives (*maqāṣid*) of Islamic criminal sanctions as set out by the Andalusian Mālikī judge Abū Bakr ibn al-‘Arabī (d. 543/1148) in *al-Qabas fī sharḥ Muwaṭṭa’ Mālik ibn Anas*, and uses them to answer the objections most often raised today against the *ḥudūd* and retaliation (*qīṣās*). It rests on a complete reading of the book “On Blood and the Ḥudūd” and the Book of Theft that follows it in *al-Qabas* and a computer-assisted survey of the rest of the work, compared with his *al-Masālik* and *Aḥkām al-Qur’ān*. It finds that Ibn al-‘Arabī described corporal punishments as “restraints and deterrents”, in agreement with al-Māwardī before him, and divided the Law’s response to transgression into a “ruling of deterrence” (*ḥukm zājir*) and a “ruling of reparation” (*ḥukm jābir*), which he applied explicitly to retaliation and blood-money and which also explains his account of combining amputation with liability for stolen property. This division precedes in time the maxim of “reparations and deterrents” (*al-jawābir wa-l-zawājir*) later set out by al-‘Izz ibn ‘Abd al-Salām and al-Qarāfī. The objectives of punishment in his thought are four: a root objective, the preservation of the necessities and the setting right of people, and three objectives that serve it: deterrence, reparation, and the reform of the offender. The study adds objectives from the wider tradition that complete his account: expiation, satisfaction of the victim and the ending of vendetta, public order, and mercy as the intention of the one who punishes. These objectives cohere in a system in which the measure of punishment follows the gravity of the offence, rights are divided between God and the human being, and seven safeguards surround enforcement. On this basis six objections are answered: cruelty and human dignity, the hadith of the ‘Uranīyūn, the abolition of retaliation, the denial of stoning, collective punishment, and the claim that Islamic sanctions are purely retributive.

Keywords: Ibn al-‘Arabī; *al-Qabas*; *maqāṣid al-sharī‘a*; Islamic criminal law; *ḥudūd*; *qīṣās*; deterrence and reparation; contemporary objections.

Introduction

Praise be to God, who placed life in retaliation for people of understanding, and blessings and peace upon the one sent as a mercy to the worlds.

Criminal sanctions are among the parts of the Sharī‘a most exposed to attack in our time. They are usually presented cut off from their objectives and isolated from the safeguards that surround them before and after enforcement, so that the *ḥudūd* and retaliation appear as bare inflictions of pain and are then judged cruel. The proper answer is not to apologise for these rulings but to return each punishment to the system in which it was legislated and to the objectives for which it was enacted.

The Andalusian judge Abū Bakr ibn al-‘Arabī left in *al-Qabas* a considerable body of foundational statements on this subject. He stated the purpose of punishments in general terms, divided the rulings on transgression into two kinds, gave purposive reasons for the *ḥudūd* and retaliation, restricted their enforcement by safeguards, and answered objections raised against some of their rulings. His book therefore lends itself to the extraction of a system of punishments, with its objectives and safeguards, against which contemporary objections can be tested.

1. Research Problem

The study addresses one central question: what are the objectives of Islamic criminal sanctions according to Ibn

al-‘Arabī in *al-Qabas*, and how do they cohere in a single system capable of answering contemporary objections? It branches into four questions. Which objectives did he state expressly, and which are implied by his treatment of the rulings? How do the types of punishment, the rights they protect and the safeguards of enforcement fit together in his thought? Which objectives recognised in the wider tradition complete his account? And how can this system answer the objections most frequently raised against the *ḥudūd* and retaliation?

2. Significance and Objectives

The significance of the study lies in two facts. Ibn al-‘Arabī was among the Mālikī authorities who combined law, hadith and legal theory, and *al-Qabas*, though concise, gives in its book on blood and the *ḥudūd* a reasoned account of most of the principles of punishment. At the same time, contemporary objections to the *ḥudūd* keep recurring, while the responses to them rarely draw on the statements of the early Mālikīs. The study aims to collect and classify Ibn al-‘Arabī’s statements on the objectives of punishment, to show how the system of punishments coheres in his thought, to compare it with its parallels in his other works and among the legal theorists, to complete it with further objectives from the tradition, and to apply it to contemporary objections.

3. Previous Studies

As far as I have been able to determine,⁽¹⁾ no study has been devoted to the objectives of punishment in Ibn al-‘Arabī’s thought. Related studies fall into four groups.

The first group studies *al-Qabas* and its author’s method. The closest is the master’s thesis of Muḥammad Maḥdī Lakhḍar ibn Nāṣir on Ibn al-‘Arabī’s method of legal reasoning in *al-Qabas*. It devotes a section to his reliance on the objectives of the Sharī‘a and cites the text of the tenth rule, “for their sake God laid down the *ḥudūd* and deterrents on earth”, as evidence of his use of *maqāṣid* in general, not of the objectives of punishment in particular.⁽²⁾

The second group studies the *maqāṣid* in Ibn al-‘Arabī’s thought. Zuhayr Hāshim Riyālāt’s doctoral thesis on purposive exegesis in *Aḥkām al-Qur’ān* cites his text on executing a group for killing one person as an example of his attention to universal rules.⁽³⁾ Al-Ṭāhir ‘Abāba’s article on the purposive understanding of the Sunna turns on reasoning from meaning and cause in reading hadith, with examples drawn from worship and transactions.⁽⁴⁾ Punishment is the subject of neither. ‘Abāba also lists three doctoral theses on Ibn al-‘Arabī’s *maqāṣid*: by Riyād ibn ‘Alī al-Jawādī, by Mālik Barrāḥ, and by ‘Abāba himself on the rules of *maqāṣid* in *al-Masālik*. I have not been able to consult them, and their titles indicate that they treat the *maqāṣid* in general, not the objectives of punishment in *al-Qabas*.⁽⁵⁾

The third group studies the objectives and rules of punishment in general. ‘Abd al-Qādir ‘Awda held that “punishment is prescribed for the reform of individuals, the protection of the community and the preservation of its order”,⁽⁶⁾ and Muḥammad Ṣidqī Āl Būrnū treated the maxim of “reparations and deterrents”.⁽⁷⁾ Both set out the objectives in general terms and do not examine Ibn al-‘Arabī’s contribution.

The fourth group answers contemporary objections to the *ḥudūd*. The closest is Muṭṭlaq al-Jāsir’s *Tiryāq*, which contains a chapter entitled “The *Ḥudūd*: Cruelty or Mercy?” and concludes that mercy “precedes and follows” them.⁽⁸⁾ It answers the objection from general premises, however, not from the texts of a particular jurist.

The contribution of the present study is to extract a system of punishments from Ibn al-‘Arabī’s texts in *al-Qabas*, compare it with his other works and with the legal theorists, complete it with further objectives from the tradition, and then make it a basis for answering contemporary objections through the statements of an early Mālikī authority.

4. Methodology and Scope

The study follows an inductive and analytical method. The field of induction is the book “On Blood and the *Ḥudūd*” in *al-Qabas* (pp. 977-1020) and the Book of Theft that follows it (pp. 1021-1030), which I read in full. I then traced the vocabulary of punishment throughout the rest of the book by computer search⁽⁹⁾ and compared the principal texts with their parallels in *al-Masālik* and *Aḥkām al-Qur’ān*. The three volumes of *al-Qabas* are continuously paginated, so it is cited by page alone. All translations from Arabic are mine; Qur’ānic references are given as (Q chapter:verse).

(1) I searched the Algerian Scientific Journal Platform (ASJP), al-Maktaba al-Shāmila, and the lists of previous studies on Ibn al-‘Arabī and his *maqāṣid* compiled by recent researchers, among them the list in al-Ṭāhir ‘Abāba, “al-Fahm al-maqāṣidī li-l-sunna al-nabawiyya: Ibn al-‘Arabī namūdhajan”, pp. 346-347.

(2) Muḥammad Maḥdī Lakhḍar ibn Nāṣir, *al-Manhaj al-istidlālī ‘inda Abī Bakr ibn al-‘Arabī min khilāl kitābihi al-Qabas*, pp. 42-49; the text cited is on p. 46.

(3) Zuhayr Hāshim Riyālāt, *al-Tafsīr al-maqāṣidī ‘inda Ibn al-‘Arabī fī tafsīrihi “Aḥkām al-Qur’ān”*, p. 92.

(4) ‘Abāba, “al-Fahm al-maqāṣidī li-l-sunna al-nabawiyya”, pp. 345, 357-358.

(5) ‘Abāba, “al-Fahm al-maqāṣidī li-l-sunna al-nabawiyya”, p. 347.

(6) ‘Abd al-Qādir ‘Awda, *al-Tashrī‘ al-jinā‘ī al-islāmī muqāraran bi-l-qānūn al-waḍ‘ī*, vol. 1, p. 609.

(7) Muḥammad Ṣidqī Āl Būrnū, *Mawsū‘at al-qawā‘id al-fiqhiyya*, vol. 3, p. 56.

(8) Muṭṭlaq ibn Jāsir al-Jāsir, *Tiryāq: naḥwa mu‘ālaja ta‘šiliyya li-l-shubuhāt al-fikriyya*, pp. 187-202; the text is on p. 202.

(9) The terms searched were: punishment (‘uqūba), ḥadd, deterrence (zajr, rad’), retaliation (qisās), blood-money (diya), discretionary punishment (ta‘zīr, adab), mutilation (muthla), concealment (satr), doubt (shubha) and repentance (tawba).

Bibliographical details of editions appear only in the bibliography at the end. The detailed law of each *ḥadd* and the punishment for apostasy lie outside the scope of the study.

5. Structure

The study consists of this introduction, a preliminary section on Ibn al-‘Arabī, *al-Qabas* and the concept of the objectives of punishment, three sections, and a conclusion. Section One sets out the objectives of punishment in *al-Qabas* and those that complete them in the tradition; Section Two shows how the system of punishments coheres and presents its safeguards; Section Three applies this system to six contemporary objections. An appendix lists the loci of the objectives and safeguards in *al-Qabas*.

Preliminary Section: Ibn al-‘Arabī, *al-Qabas*, and the Concept of the Objectives of Punishment

This section introduces the author and the book on which the study is built, and then defines the concept of the objectives of punishment as it is used in what follows.

1. Ibn al-‘Arabī

He is Abū Bakr Muḥammad ibn ‘Abd Allāh ibn Muḥammad ibn ‘Abd Allāh ibn Aḥmad al-Ma‘āfirī al-Ishbīlī, known as Ibn al-‘Arabī. He was born in Seville on the night of a Thursday, with eight nights remaining in Sha‘bān 468 (1076). He set out for the East with his father at the beginning of Rabī‘ al-Awwal 485 (1092). In Syria he met Abū Bakr al-Turtūshī and studied law with him; in Baghdad he heard from its leading masters and kept the company of Abū Bakr al-Shāshī and Abū Ḥamid al-Ghazālī; he performed the pilgrimage in 489 and heard from scholars of hadith in Egypt and Alexandria. According to his student Ibn Bashkuwāl, he returned to al-Andalus in 493 (1099-1100), bringing to Seville learning that no earlier traveller to the East had brought; other reports give 491 and 495 for his return.⁽¹⁾

He was appointed judge of Seville, where his administration was praised though he was known for firmness and severity; he was later dismissed and devoted himself to teaching and writing, and he built a wall around Seville from his own wealth.⁽²⁾ Al-Dhahabī reports that he “was among those of whom it is said that he attained the rank of independent reasoning (*ijtihād*)”.⁽³⁾ Among those who studied with him were Ibn Bashkuwāl, al-Suhaylī and al-Qāḍī ‘Iyāḍ,⁽⁴⁾ and among his works are *Aḥkām al-Qur‘ān*, *‘Arīḍat al-aḥwadhī* on the *Jāmi‘* of al-Tirmidhī, *al-Maḥṣūl* in legal theory, *al-Masālik* and *al-Qabas*.⁽⁵⁾ He died in Rabī‘ al-Ākhir 543 (1148) and was buried in Fez.⁽⁶⁾

2. The Book *al-Qabas*

Al-Qabas fī sharḥ Muwaṭṭa’ Mālik ibn Anas is a commentary on Mālik’s *Muwaṭṭa’* that Ibn al-‘Arabī dictated to his students; he repeatedly calls it “this dictation” (*hādhā al-implā*).⁽⁷⁾ According to its editor, the other manuscripts date the dictation to 532 (1137-1138) in Cordoba, during his withdrawal from the judgeship, although the base manuscript does not record this date.⁽⁸⁾

Its orientation is declared at the outset. Ibn al-‘Arabī describes the *Muwaṭṭa’* as built by Mālik “on laying down the principles for the branches”, a book in which Mālik “drew attention to most of the principles of jurisprudence to which its questions and branches return”, and promises that the reader will see this when he points it out in the course of the dictation; later he states plainly that “this book is for the principles, not the branches”.⁽⁹⁾ In the preface to *al-Masālik*, his fuller commentary on the same work, he calls *al-Qabas* “the most recent book in which weighty sciences and valuable benefits were recorded”.⁽¹⁰⁾ Later Mālikīs drew on it: al-Qarāfī, for instance, quotes “the author of *al-Qabas*” in *al-Dhakhīra*.⁽¹¹⁾ Within the book, Ibn al-‘Arabī gathers the chapters of the *ḥudūd*, blood-money and sworn compurgation under a single heading, “On Blood and the *Ḥudūd*” (*al-Qawl fī al-dimā’ wa-l-ḥudūd*), which forms the principal field of this study.⁽¹²⁾

3. The Concept of the Objectives of Punishment

Lexically, punishment (*‘uqūba*) derives from the expression “he punished him for his sin (*‘aqabahu bi-dhanbihi*), that is, he took him to account for it; the noun is *‘uqūba*”.⁽¹³⁾ In legal usage it is a genus comprising the fixed penalties (*ḥudūd*), retaliation and discretionary punishment (*ta‘zīr*). Al-Māwardī stated that “the *ḥudūd* are deterrents (*zawājir*) that God, exalted be He, laid down to restrain from committing what He has forbidden and neglecting what He has

(1) Ibn Khallikān, *Wafayāt al-a‘yān wa-anbā’ abnā’ al-zamān*, vol. 4, pp. 296-297; al-Dhahabī, *Siyar a‘lām al-nubalā’*, vol. 20, pp. 197-199, 201; Ibn Farḥūn, *al-Dībāj al-mudhhab fī ma‘rifat a‘yān ‘ulamā’ al-madhhab*, vol. 2, p. 254.

(2) al-Dhahabī, *Siyar*, vol. 20, p. 200; Ibn Khallikān, *Wafayāt al-a‘yān*, vol. 4, p. 297.

(3) al-Dhahabī, *Siyar*, vol. 20, p. 201.

(4) al-Dhahabī, *Siyar*, vol. 20, pp. 200-201; Ibn Farḥūn, *al-Dībāj*, vol. 2, p. 256.

(5) al-Dhahabī, *Siyar*, vol. 20, p. 199; Ibn Farḥūn, *al-Dībāj*, vol. 2, p. 254.

(6) Ibn Khallikān, *Wafayāt al-a‘yān*, vol. 4, p. 297; al-Dhahabī, *Siyar*, vol. 20, p. 203.

(7) Ibn al-‘Arabī, *al-Qabas fī sharḥ Muwaṭṭa’ Mālik ibn Anas*, pp. 135, 1010, 1048.

(8) Muḥammad ‘Abd Allāh Walad Karīm, editor’s introduction to Ibn al-‘Arabī, *al-Qabas*, pp. 66-67.

(9) Ibn al-‘Arabī, *al-Qabas*, pp. 75, 846.

(10) Ibn al-‘Arabī, *al-Masālik fī sharḥ Muwaṭṭa’ Mālik*, vol. 1, p. 331.

(11) al-Qarāfī, *al-Dhakhīra*, vol. 1, p. 295.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 977.

(13) Ibn Sīda, *al-Muḥkam wa-l-muḥīt al-a‘zam*, vol. 1, p. 243.

commanded”.⁽¹⁾ Al-Qarāfī gathered them under the heading of deterrents (*zawājir*): “they may be fixed, like the *hudūd*, or not fixed, like discretionary punishments”;⁽²⁾ and Ibn Farḥūn defined *ta’zīr* as “discipline for reform and deterrence for sins for which neither *hudūd* nor expiations have been prescribed”.⁽³⁾

Ibn al-‘Arabī gave no formal definition of punishment, but he stated its purpose: “It is not hidden from anyone of understanding that God placed these corporal punishments only as restraints and deterrents (*rawādi’ wa-zawājir*).”⁽⁴⁾ He also reported from al-Zajjāj and other philologists that “the root meaning of *ta’zīr* is restraint (*rad’*) wherever it occurs; hence disciplinary *ta’zīr*, because it restrains the offender and turns him back from repeating the act”.⁽⁵⁾ In this study, therefore, the objectives of punishment are the ends that the Lawgiver intended in legislating the *hudūd*, retaliation and *ta’zīr* and what attaches to them; to these the study joins the safeguards that protect those ends in enforcement.⁽⁶⁾

Section One: The Objectives of Punishment in *al-Qabas* and Their Completion in the Tradition

Ibn al-‘Arabī’s statements on the objectives of punishment converge on one root, the preservation of the necessities and the setting right of people, which three objectives serve: deterrence, reparation and the reform of the offender. The tradition adds further objectives that complete this picture.

1.1 Preserving the Necessities and Setting People Right

Ibn al-‘Arabī opens the book on blood with the words: “Blood is of grave standing in religion and of great rank with God, exalted be He.”⁽⁷⁾ He cites the hadith “A man remains in latitude in his religion ... so long as he does not shed forbidden blood”,⁽⁸⁾ and continues: “if killing animals without right entails a grave sin, how much more the killing of a human being who, were he weighed against the entire world, would outweigh it”, adding the hadith “The first thing to be judged on the Day of Resurrection is blood.”⁽⁹⁾

In another place he makes the Prophet’s saying “Your blood, your property and your honour are inviolable to you” the root of his discussion of transgression, and observes that the Prophet “did not mention private parts, but they are included under honour, so this hadith comprehends all the inviolables of the Law”.⁽¹⁰⁾ Punishments are thus the protective fence of lives, honour and property, which belong to the five necessities of which his teacher al-Ghazālī said: “the prohibition of destroying these five principles and deterring from it cannot fail to be included in any religion or any law by which the welfare of creation is intended”.⁽¹¹⁾

He made public interests the purpose for which the *hudūd* were laid down. In the tenth of his rules on sales, which concerns objectives and public interests, he stated that the community agreed on taking them into account in general and that “for their sake God laid down the *hudūd* and deterrents on earth, for setting people right (*istiṣlāḥan li-l-khalq*)”, and he extended this setting right to those who bear no legal obligation: “to the point that this extends even to animals: the beast is struck for its correction though it bears no obligation ... and closer to our purpose, the child is struck to train him in acts of worship, not as a beating of obligation but as a beating of habituation and training”.⁽¹²⁾ These two examples correspond to those that al-‘Izz ibn ‘Abd al-Salām later placed among the deterrents that are “due ... to avert harms without sin or transgression”: “the training of animals and the discipline of children for their reform”.⁽¹³⁾ He assigned honour its rank within this preservation: “there is no disagreement that God, glory be to Him, made honour a third of religion in the chapters of prohibitions and protected it with severity: stoning for [transgressions of] chastity, which is part of honour, and a *ḥadd* for [attacks on] lineage”.⁽¹⁴⁾ And he justified executing a group for killing one person, “they

(1) al-Māwardī, *al-Aḥkām al-sultāniyya*, p. 325.

(2) al-Qarāfī, *Anwār al-burūq fī anwā’ al-furūq*, vol. 1, p. 213.

(3) Ibn Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-aqdiya wa-manāhiḥ al-aḥkām*, vol. 2, p. 288.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 1030. The same text appears in the same place in Ibn al-‘Arabī, *al-Masālik*, vol. 7, p. 152.

(5) Ibn al-‘Arabī, *al-Qabas*, p. 1081.

(6) Compare Ibn ‘Ashūr: “We must here set out at length the objective of the Sharī‘a in punishments, whether retaliation, *hudūd* or *ta’zīr*; for among the greatest objectives of the Sharī‘a is the preservation of the order of the community.” Ibn ‘Ashūr, *Maqāṣid al-sharī‘a al-islāmiyya*, vol. 3, p. 549.

(7) Ibn al-‘Arabī, *al-Qabas*, p. 977.

(8) Ibn al-‘Arabī, *al-Qabas*, p. 978. Al-Bukhārī reports it with similar wording: al-Bukhārī, *al-Jāmi‘ al-musnad al-ṣaḥīḥ*, vol. 9, p. 2, no. 6862, where it begins “The believer will remain”.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 978. Al-Bukhārī reports it with similar wording: al-Bukhārī, *Ṣaḥīḥ*, vol. 9, pp. 2-3, no. 6864, in the words “The first thing to be judged between people is blood”; and Muslim ibn al-Ḥajjāj, *al-Musnad al-ṣaḥīḥ*, vol. 3, p. 1304, no. 1678, in the words “The first thing to be judged between people on the Day of Resurrection is blood”.

(10) Ibn al-‘Arabī, *al-Qabas*, p. 906. The hadith is reported by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, p. 176, no. 1739; and Muslim, *Ṣaḥīḥ*, vol. 3, pp. 1305-1306, no. 1679.

(11) al-Ghazālī, *al-Mustasfā*, p. 174. On offences (*jināyāt*) as serving “the preservation of all of them from the side of non-existence”, see al-Shāṭibī, *al-Muwāfaqāt*, vol. 2, pp. 19-20.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 802.

(13) al-‘Izz ibn ‘Abd al-Salām, *Qawā‘id al-aḥkām fī maṣāliḥ al-anām*, vol. 1, p. 178.

(14) Ibn al-‘Arabī, *al-Qabas*, p. 1018.

are killed for him to preserve the principle of [the inviolability of] blood”, and amputating a group who steal together, “all of them are to have their hands cut to preserve the principle of [the inviolability of] property”, lest criminals seek impunity in numbers.⁽¹⁾

1.2 Deterrence (*al-Zajr*)

Deterrence is the objective through which Ibn al-‘Arabī stated the purpose of punishment (“restraints and deterrents”), and he made clear that it reaches both the offender and others. Commenting on the verse “and let a party of the believers witness their punishment” (Q 24:2), he wrote: “the legal point of this is that the one on whom the *hadd* is carried out, and whoever witnesses and attends it, is admonished by it and restrained on its account, and word of it spreads, so that those who come after take heed”.⁽²⁾

His treatment of the repeat thief shows how punishment bears on the offender himself, both by restraining him and by reducing his capacity to offend. Defending the Medinan report from Mālik that a thief who steals a fifth time is killed, he noted that the hadith on this point is “weak” and cannot make lawful what is forbidden, and that Mālik “relied” in this report “on public interest”: “the public interest requires, when he steals, that his right hand be cut, with which he took what was not lawful for him, reducing his power to seize, which God gave him as a strength for obedience and which he turned to disobedience”; and if he steals a fifth time, “it becomes clear to us that it is a wicked soul, admonished neither by itself nor restrained by the afflictions of its limbs, so nothing remains but to destroy it”.⁽³⁾

The deterrence of others he stated in several places. He saw the wisdom of the imam’s abstaining from praying over the one stoned in that “when the imam leaves off praying over him, that deters others”;⁽⁴⁾ he said of retaliation, “the meaning is that the killer, if he knows that he will be killed, refrains”;⁽⁵⁾ and he reported from the scholars of the school that the false witness “is to be disciplined painfully and publicly exposed, so that this becomes a deterrent to others”.⁽⁶⁾ Al-Qarāfī later formulated the same point: deterrents are, for the most part, imposed on the disobedient “to deter them from disobedience and to deter whoever would venture upon disobedience after them”.⁽⁷⁾

1.3 Reparation (*al-Jabr*) and the Protection of Rights

Ibn al-‘Arabī’s clearest statement on the system of punishments occurs in his discussion of transgression under the chapter on hiring riding animals: “When transgression occurs against them [lives, property and honour], the Law has two rulings over the transgressor. One is a ruling of deterrence (*ḥukm zajr*), such as beating and killing. The second is a ruling of reparation (*ḥukm jabr*), such as the value [of what was destroyed] and blood-money. There is deterrence in reparation, because it diminishes the transgressor’s property, but there is no reparation in deterrence; rather it contains preservation and the exaction [of the right], and concerning this came the statement of God: ‘In retaliation there is life for you’ (Q 2:179).”⁽⁸⁾

He thus distinguished two ends: reparation restores what the victim lost, while deterrence protects the community and exacts the right. He also noted that the two overlap in one direction: reparation deters, because it reduces the transgressor’s property, whereas deterrence does not repair, though it protects. He used the two terms in retaliation and blood-money, calling killing “the deterrent object” and blood-money “the reparative substitute”, and he said of one who holds the victim while another kills him: “they share in the blood-money, which is the reparative substitute, so they must share in retaliation, which is the deterrent compensation”.⁽⁹⁾ In theft, though he does not use the two terms there, he called the liability for stolen property “another punishment”, which illustrates his principle that “there is deterrence in reparation”; explaining the position of Mālik that amputation and liability are combined against a solvent thief but not an insolvent one: “if he is solvent, amputation is due on his hands as a punishment and liability in his property is due as another punishment; if he is insolvent, amputation is due on his body as a punishment, and were we to impose liability in his debt we would combine two punishments on one seat, which is not permissible”.⁽¹⁰⁾

This division corresponds to what later became an independent maxim under the name “reparations and deterrents”. Al-‘Izz ibn ‘Abd al-Salām stated that “reparations are legislated to secure benefits that were lost, and deterrents are

(1) Ibn al-‘Arabī, *al-Qabas*, p. 1030.

(2) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 3, p. 335.

(3) Ibn al-‘Arabī, *al-Qabas*, pp. 1029-1030.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 1015.

(5) Ibn al-‘Arabī, *al-Qabas*, p. 986.

(6) Ibn al-‘Arabī, *al-Qabas*, p. 888.

(7) al-Qarāfī, *al-Furūq*, vol. 1, p. 213.

(8) Ibn al-‘Arabī, *al-Qabas*, p. 906. The printed text reads *yanquḍu bi-milk*, and *al-Masālik* reads *bi-naqīd li-milk*; the context requires *yanquṣu* (“diminishes”), since reparation deters by reducing the transgressor’s property. The parallel passage, with close wording, is in Ibn al-‘Arabī, *al-Masālik*, vol. 6, p. 331, which reads “preservation and benefit” (*hifẓ wa-stinfāʾ*) for “preservation and exaction”.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 986. In the first place on the page the print reads “the deterrent object” (*al-gharaḍ al-zājir*) and in the second “the deterrent compensation” (*al-iwaḍ al-zājir*); the latter corresponds better to “the reparative substitute”.

(10) Ibn al-‘Arabī, *al-Qabas*, p. 1028.

legislated to avert harms”,⁽¹⁾ and his student al-Qarāfī said of them: “these are two great maxims”.⁽²⁾ Ibn al-‘Arabī’s statement is earlier than theirs, though I have found nothing to show that they took it from him. In his thought the division concerns transgression and punishment, whereas for them it is broader and includes the reparations of worship, such as dry ablution and the prostration of forgetfulness.⁽³⁾

Reparation is also linked to what God granted this community in particular. Ibn al-‘Arabī wrote: “retaliation is a deterrent in every nation, and this nation was singled out for blood-money as reparation, and God gave the next of kin the choice between accepting the blood-money and killing, and this is the correct view”,⁽⁴⁾ and elsewhere: “God legislated retaliation in every religion for the benefit to which He drew attention ... then God, exalted be He, stored up in His writ for this nation, out of kindness to it in honour of its Prophet, the blood-money.”⁽⁵⁾ This is confirmed by the report of Ibn ‘Abbās: “Retaliation was prescribed for the Children of Israel, and blood-money was not among them. So God said to this nation: ‘Retaliation is prescribed for you in cases of killing ... but if the killer is pardoned by his brother ...’”, and he explained “that is an alleviation from your Lord and a mercy” (Q 2:178) as meaning: in relation to what was prescribed for those before you.⁽⁶⁾ Reparation is therefore a mercy added to the deterrence shared by all revealed laws.

1.4 Reforming the Offender and Mercy

For Ibn al-‘Arabī punishment does not end with deterrence and reparation; he also has in view the reform of the offender himself. He cites Mā‘iz’s words, “O Messenger of God, I have wronged myself and repented; purify me”, and the Prophet’s reply, “Woe to you, go back, seek God’s forgiveness and repent to Him”,⁽⁷⁾ and the Prophet’s saying of the woman who was stoned: “She has repented with a repentance that, were it divided among seventy of the people of Medina, would suffice them.”⁽⁸⁾ He states that the Prophet did not turn Mā‘iz away in order to establish the offence by confession; “he turned him away only in the hope that he would retract”.⁽⁹⁾

He held that mercy is due after the punishment has been carried out. The wisdom of the imam’s abstaining from the funeral prayer over the executed is deterrence of others, not anger at the dead. He rejected the view of those who said the imam “killed him in anger for God’s sake, so how could he pray over him in mercy?”: “this is corrupt, for the place of anger has passed and the place of mercy has become fixed”.⁽¹⁰⁾ The disagreement he reports concerns the imam’s prayer alone.

He explained the acceptance of the repentance of the armed robber (*muḥārib*) before he is overpowered by the same objective, siding with the majority of scholars, who held that repentance does not remove the *ḥadd* in other offences, and holding that the verse is “a text specific to that case, for the sake of public interest”: “for the one entrenched in the mountain, if he knew that his repentance would not be accepted, would persist blindly in his transgression; so repentance was legislated to bring him down from his state, in the hope that he would desist”.⁽¹¹⁾ And he explained that the Law removes punishment from one who comes seeking a legal opinion: “the Law has decided according to the public interest in this, namely the removal of punishment and reproach from the one seeking a fatwa”.⁽¹²⁾

1.5 Objectives That Complete the Picture in the Tradition

The four objectives above do not exhaust what the jurists recognised. Four further objectives, stated in the hadith and by later scholars, complete his account and rest on texts that he himself cites or on principles he stated.

a) Expiation and Purification

The Prophet said, in the pledge of ‘Ubāda ibn al-Šāmī: “Whoever commits any of these and is punished for it in this world, that is an expiation for him; and whoever commits any of these and God conceals it, his affair is with God: if He wills He pardons him, and if He wills He punishes him.”⁽¹³⁾ This explains Mā‘iz’s request “purify me” and the Prophet’s praise of the repentance of the woman who was stoned. The punishment accepted by the offender is purification for him in the Hereafter. On the side of the ruler, Ibn Taymiyya counted the carrying out of the *ḥadd* “among

(1) al-‘Izz ibn ‘Abd al-Salām, *Qawā‘id al-aḥkām*, vol. 1, pp. 178-179.

(2) al-Qarāfī, *al-Furūq*, vol. 1, p. 213; see also al-Qarāfī, *al-Dhakhīra*, vol. 8, p. 289; and, for its modern treatment, Āl Būrnū, *Mawsū‘at al-qawā‘id al-fiqhiyya*, vol. 3, p. 56.

(3) al-‘Izz ibn ‘Abd al-Salām, *Qawā‘id al-aḥkām*, vol. 1, p. 179; al-Qarāfī, *al-Furūq*, vol. 1, p. 213.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 906.

(5) Ibn al-‘Arabī, *al-Qabas*, p. 989.

(6) al-Bukhārī, *Ṣaḥīḥ*, vol. 6, pp. 23-24, no. 4498.

(7) Ibn al-‘Arabī, *al-Qabas*, p. 1003. Muslim reports it with similar wording: Muslim, *Ṣaḥīḥ*, vol. 3, pp. 1321-1322, no. 1695.

(8) Ibn al-‘Arabī, *al-Qabas*, p. 1005. The hadith is reported by Muslim, *Ṣaḥīḥ*, vol. 3, p. 1324, no. 1696.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 1011.

(10) Ibn al-‘Arabī, *al-Qabas*, p. 1015.

(11) Ibn al-‘Arabī, *al-Qabas*, p. 1016.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 498.

(13) al-Bukhārī, *Ṣaḥīḥ*, vol. 1, pp. 12-13, no. 18.

the acts of worship, like striving in the path of God”, and therefore held that it may not be postponed once proven.⁽¹⁾ The *ḥadd* is therefore not only an instrument of social order; it also serves the offender’s own salvation.

b) Satisfying the Victim and Ending Vendetta

Ibn ‘Āshūr summarised the objective of the Sharī‘a in legislating the *ḥudūd*, retaliation, *ta‘zīr* and compensation for injuries in three things: “the discipline of the offender, the satisfaction of the victim, and the deterrence of those who would follow the example of offenders”.⁽²⁾ He explained that the Sharī‘a itself undertook this satisfaction “and set a limit to abolish the old vendettas”.⁽³⁾ Ibn al-‘Arabī had already expressed this meaning. He reported from al-Sha‘bī and Qatāda that the verse on retaliation was revealed concerning Arabs who would accept only a free man for a slave and a noble for a lowly person, saying “killing is the best preventive of killing”, and that God “turned them from this to retaliation, which is equality together with the exaction of the right”, adding: “between the two statements there is a vast gulf in eloquence and justice”.⁽⁴⁾ Retaliation was a response to the Arabs who “would kill a hundred in exchange for one out of boastfulness”, and “the Law abolishes partisan zeal (*ḥamiyya*) and upholds protection (*ḥimāya*)”.⁽⁵⁾

c) Preserving Public Order

Ibn ‘Āshūr stated that “among the greatest objectives of the Sharī‘a is the preservation of the order of the community, and its order is preserved only by closing the breaches of disorder, strife and aggression”, and that this “does not take its proper effect unless the Sharī‘a takes charge of it and the government executes it; otherwise people only add evil to evil in repelling evil”.⁽⁶⁾ This corresponds to Ibn al-‘Arabī’s placing the exaction of God’s right in the hands of the imam, as will be seen in Section Two.

d) Mercy as the Intention of the One Who Punishes

Ibn Taymiyya described the carrying out of the *ḥudūd* as “a mercy from God to His servants”, so that the ruler should be firm in carrying out the *ḥadd*, “and his intention should be mercy to people by restraining them from evils, not the satisfaction of his rage or the desire for superiority over people, like the father when he disciplines his child”, and like the physician who gives the patient a bitter medicine.⁽⁷⁾ Ibn ‘Āshūr likewise held that “the Sharī‘a is not vindictive” and that “the deterrents, punishments and *ḥudūd* are nothing but the reform of people’s condition”.⁽⁸⁾ This objective governs the spirit in which the punishment is carried out, and it agrees with Ibn al-‘Arabī’s statement that the place of mercy becomes fixed once the *ḥadd* has been carried out.

Section Two: The Integrated System of Punishments and Its Safeguards in al-Qabas

The preceding objectives do not work in isolation. They operate within a system in which the types of punishment are graded, rights are distributed, and safeguards prevent injustice in enforcement.

2.1 The Types of Punishment and Their Gradation According to the Offence

Ibn al-‘Arabī made the measure of punishment follow the rank and effect of the sin. Refuting the Ḥanafī analogy between the false witness and the man who pronounces *ḡihār*, he wrote that “God, Mighty and Majestic, made the recompense of *ḡihār* an expiation because he harmed none but himself thereby; it is a sin that does not pass on to another, in this world or the next”, and that it was originally a form of divorce which God relaxed,⁽⁹⁾ unlike the false witness, who, as he reports from the scholars of the school, “is to be disciplined painfully”. In this context, harm extending to others is a ground for aggravation. Of slanderous accusation (*qadhf*) he said that God “protected [lineage] with the *ḥadd* and set it below [the penalty for] fornication, to show the difference of degrees among sins and indecencies ... and whatever else, such as insult and harm, carries discretionary discipline”.⁽¹⁰⁾ He said of killing by treachery (*ghīla*) with a stick that the stick is “greater in deceit” than the sword, “so it ought to be greater in punishment”,⁽¹¹⁾ and he stated that “harm is of two kinds: particular, which is the lighter, and general, which is the graver”.⁽¹²⁾ In *Aḥkām al-Qur’ān* he drew the general conclusion from ‘Umar’s giving a man who drank wine in Ramadan a hundred lashes, eighty for wine and twenty for violating the month: “thus punishments must be compounded according to the aggravation of offences and the violation of sanctities”.⁽¹³⁾ Ibn al-Qayyim later elaborated the same principle: “since the ranks of offences differ, the ranks of punishments had to differ”.⁽¹⁴⁾

(1) Ibn Taymiyya, *al-Siyāsa al-shar‘iyya fī iṣlāḥ al-rā‘ī wa-l-ra‘iyya*, p. 79.

(2) Ibn ‘Āshūr, *Maqāṣid al-sharī‘a*, vol. 3, p. 550.

(3) Ibn ‘Āshūr, *Maqāṣid al-sharī‘a*, vol. 3, p. 551.

(4) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 1, p. 89.

(5) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 1, p. 95.

(6) Ibn ‘Āshūr, *Maqāṣid al-sharī‘a*, vol. 3, p. 549.

(7) Ibn Taymiyya, *al-Siyāsa al-shar‘iyya*, p. 79.

(8) Ibn ‘Āshūr, *Maqāṣid al-sharī‘a*, vol. 3, p. 549.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 888.

(10) Ibn al-‘Arabī, *al-Qabas*, p. 1018.

(11) Ibn al-‘Arabī, *al-Qabas*, p. 1002.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 1067.

(13) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 3, p. 335.

(14) Ibn Qayyim al-Jawziyya, *I‘lām al-muwaqqi‘īn ‘an rabb al-‘ālamīn*, vol. 2, p. 408.

He also combined the fixity of what is prescribed with what is left to judgement. Of the minimum value for amputation (*niṣāb*) he said: “had the Law left it to independent reasoning, that would have been permissible, but the Creator, exalted be He, Himself undertook to explain its ruling through the tongue of His Messenger”.⁽¹⁾ Of wine, by contrast, he noted that the Prophet punished “with sandals, palm-branches and garments, without limit or measure”, that forty lashes were given in the time of ‘Uthmān, and that the matter settled at eighty in the time of Mu‘āwīya; against al-Shāfi‘ī, who left it to the imam, he added: “especially given people’s indulgence in it today: were an increase beyond eighty possible, they would deserve it”.⁽²⁾ And he bound retaliation to an equality that may not be exceeded: “every wound from which death is not feared is subject to retaliation, and wherever death is feared, retaliation is dropped by consensus”.⁽³⁾

2.2 The Right of God and the Right of the Human Being

Ibn al-‘Arabī distributed punishments between the two rights. Retaliation is the victim’s right “exclusively”, so equality is considered in it and it depends on his choice, whereas amputation for theft is “for God” because, as he says in explaining why a Muslim’s hand is cut for stealing the property of a non-Muslim, it is “a crime against all Muslims”.⁽⁴⁾ When the crime touches the community, the right becomes God’s, as in killing by treachery, “because the crime there is against all Muslims; hence the obligation is exclusively God’s and does not depend on the choice of the victim”.⁽⁵⁾ The *ḥadd* of slanderous accusation has two aspects: “it contains an element of God’s right and an element of the human being’s right, except that the human being’s right predominates”.⁽⁶⁾

This distribution has consequences. The human being’s right depends on his choice, so pardon operates in it; God’s right in theft is not dropped by ownership that arises after the *ḥadd* has become due. Ibn al-‘Arabī states that “if the thief’s ownership of the stolen item arises afterwards, amputation is not dropped, because it is ownership that arose after the *ḥadd* became due”, and cites the Prophet’s words to Ṣafwān when he gave his cloak to the thief: “Why not before you brought him to me?”⁽⁷⁾ The Prophet expressed the same rule in general terms: “Pardon the *ḥudūd* among yourselves; whatever *ḥadd* reaches me has become binding.”⁽⁸⁾ In retaliation Ibn al-‘Arabī held, against the report of Ibn al-Qāsim from Mālik that its consequence is “retaliation only”, that “the next of kin of the slain has the choice”,⁽⁹⁾ and he explained why the killer must accept blood-money when it is offered to him: “he has offered him the survival of his own life at the price of the killing, so he must accept it”.⁽¹⁰⁾

God’s right is, in principle, in the hands of the imam: “flogging for fornication is God’s by consensus; His deputy exacts it in this and in its like, and His vicegerent carries it out over him and over others, namely the imam or whoever acts in that capacity”; Mālik and al-Shāfi‘ī, however, excluded the *ḥudūd* of slaves “from the authority of the imam and placed them in the hands of the masters”.⁽¹¹⁾ This agrees with his insistence in *Aḥkām al-Qur’ān* on strict equality in retaliation, a life for a life and a limb for a limb, against those whose zeal would take a life for a limb: “the Law abolishes partisan zeal and upholds protection”.⁽¹²⁾ This integration also prevents the injustice of cumulation, as in his prohibition of combining two punishments on one seat.

2.3 Seven Safeguards of Justice and Mercy in Enforcement

Seven safeguards surrounding punishment can be drawn from *al-Qabas*.

The first is knowledge of the prohibition. “Among the principles of the Law is that one who is ignorant of the prohibition and commits it is safe from punishment and sin”, provided that nothing “in his condition, the circumstances and the time indicates that he is lying”.⁽¹³⁾

The second is that the offence be pure and free of doubt. On the conditions of the *ḥadd* for fornication he wrote: “as for our saying ‘forbidden’, it is so that it be a sin befitting this punishment; as for our saying ‘pure’, it is so that the doubt (*shubha*) that drops the *ḥadd* be absent”.⁽¹⁴⁾ He reports, in explaining the view that a confessor may retract if he gives a reason, that “the *ḥadd* is among what is dropped by doubt”,⁽¹⁵⁾ and he reports from some scholars of the school

(1) Ibn al-‘Arabī, *al-Qabas*, p. 1023.

(2) Ibn al-‘Arabī, *al-Qabas*, pp. 655-656.

(3) Ibn al-‘Arabī, *al-Qabas*, p. 997.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 985.

(5) Ibn al-‘Arabī, *al-Qabas*, p. 985.

(6) Ibn al-‘Arabī, *al-Qabas*, p. 1019.

(7) Ibn al-‘Arabī, *al-Qabas*, pp. 1024-1025. The hadith is reported with similar wording by Abū Dāwūd, *al-Sunan*, vol. 4, p. 138, no. 4394.

(8) Abū Dāwūd, *al-Sunan*, vol. 4, p. 133, no. 4376.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 989. The hadith of the choice is reported with similar wording by al-Bukhārī, *Ṣaḥīḥ*, vol. 9, p. 5, no. 6880; and Muslim, *Ṣaḥīḥ*, vol. 2, p. 989, no. 1355.

(10) Ibn al-‘Arabī, *al-Qabas*, p. 990.

(11) Ibn al-‘Arabī, *al-Qabas*, p. 1017.

(12) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 1, p. 95.

(13) Ibn al-‘Arabī, *al-Qabas*, p. 190.

(14) Ibn al-‘Arabī, *al-Qabas*, p. 1013.

(15) Ibn al-‘Arabī, *al-Qabas*, p. 1011.

that “the presence of something permitting in the object creates, alongside the prohibition, a doubt that removes the punishment”.⁽¹⁾

The third is verification of confession and acceptance of retraction. “Once the confession is heard, it must be followed by examination”, as the Prophet asked of Mā’iz, “Is he mad?”⁽²⁾ He did not accept the confession of a drunk,⁽³⁾ and he held that retraction is accepted absolutely: “this is the truth, and the hadiths mentioned above prove it: the Prophet’s turning away everyone who confessed to fornication and prompting him to retract; and so should every judge do”.⁽⁴⁾ For this reason he recommended that one who asks about a *ḥadd* “be questioned and approached with prompting, that perhaps he may retract”.⁽⁵⁾ He preferred, of two explanations of why the Prophet did not imprison the confessed fornicator before the *ḥadd*, that the confessor “may retract, so what benefit would there be in imprisoning him?”, saying: “I hold the first interpretation.”⁽⁶⁾ And of one who confesses to killing by mistake he chose, of three reports, that the blood-money is due from his own wealth, “lest the paternal kin (‘*awāqil*) be held liable on the basis of a claim; there is nothing in the principles of the Law that makes Zayd’s liability depend on what ‘Amr says”.⁽⁷⁾

The fourth is concealment. In the *ḥudūd* it is better for the witness “to conceal the one who has exposed himself”, unless, as he reports from the scholars of the school, his wrongdoing “spreads among people, in which case it is better to raise the matter to the judge”.⁽⁸⁾ In theft he approved of what “preserves [God’s] pardon for the servant and lets down His covering over him”,⁽⁹⁾ and he cites the Prophet’s words to Hazzāl: “Had you covered him with your cloak, it would have been better for you”, and his words about Mā’iz: “Why did you not leave him, so that he might repent and God turn to him?”⁽¹⁰⁾

The fifth is that no one is punished for another’s sin. Retaliation is not exacted from a pregnant woman while she is pregnant, because “the pregnant woman has another being with her that has not deserved punishment”,⁽¹¹⁾ which is a branch of the principle he stated: “no one is punished for the sin of another”.⁽¹²⁾

The sixth is the prohibition of mutilation and excess. “The community agreed on the prohibition of mutilation (*muthla*)”,⁽¹³⁾ which he defined as “exceeding the punishment or departing from its form”, explaining that “mutilation is torment, and torment is not permissible except for God, exalted be He, or what occurs in exacting the right in the *ḥadd*”.⁽¹⁴⁾ In flogging, the whip should be “a whip between two whips, and a beating between two beatings”; the strokes are spread over the back and the vital places are avoided, “and there is no disagreement about this”.⁽¹⁵⁾ He adds that this holds “so long as people do not persist in evil”; otherwise “severity becomes necessary and the *ḥadd* is increased because of the increase in the sin”.⁽¹⁶⁾

The seventh is regard for the objective of the punishment in its application. He explained Mālik’s exclusion of women from the general ruling of banishment for unmarried fornicators on the ground that “her banishment exposes her to falling into the like of what she was flogged for, and a woman is protected only by seclusion”. He then cited a point of legal theory from Imām al-Ḥaramayn and confirmed it: “a general statement is general only through the intention accompanying the utterance”.⁽¹⁷⁾

Section Three: The Role of These Objectives in Refuting Contemporary Objections

Once this system is established, the most common objections to Islamic punishments can be tested against it. Most of them rest on detaching the punishment from its objectives and its safeguards.

(1) Ibn al-‘Arabī, *al-Qabas*, p. 984.

(2) Ibn al-‘Arabī, *al-Qabas*, p. 1011. The hadith is reported with similar wording by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, p. 165, no. 6815; and Muslim, *Ṣaḥīḥ*, vol. 3, p. 1318, no. 1691.

(3) Ibn al-‘Arabī, *al-Qabas*, p. 1012.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 1011.

(5) Ibn al-‘Arabī, *al-Qabas*, p. 675. The hadith of prompting retraction is reported with similar wording by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, p. 167, no. 6824.

(6) Ibn al-‘Arabī, *al-Qabas*, p. 1016.

(7) Ibn al-‘Arabī, *al-Qabas*, p. 990.

(8) Ibn al-‘Arabī, *al-Qabas*, p. 888.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 675.

(10) Ibn al-‘Arabī, *al-Qabas*, pp. 1004-1005. The words to Hazzāl are reported with similar wording by Abū Dāwūd, *al-Sunan*, vol. 4, p. 134, no. 4377, and the words about Mā’iz by Abū Dāwūd, *al-Sunan*, vol. 4, p. 145, no. 4419.

(11) Ibn al-‘Arabī, *al-Qabas*, p. 985.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 1174.

(13) Ibn al-‘Arabī, *al-Qabas*, p. 596.

(14) Ibn al-‘Arabī, *al-Qabas*, p. 597. The hadith he cites prohibiting punishment by fire is reported with similar wording by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, p. 61, no. 3016.

(15) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 3, pp. 334-335.

(16) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 3, p. 335.

(17) Ibn al-‘Arabī, *al-Qabas*, p. 1010. The print then reads *al-takhṣiṣ alladhī li-ajlihi shurī’a al-jald*; the correct reading is that of *al-Masālik*, *al-taḥṣīn alladhī li-ajlihi shurī’a al-ḥadd* (“the protection for the sake of which the *ḥadd* was legislated”). Ibn al-‘Arabī, *al-Masālik*, vol. 7, p. 109.

3.1 The Objection of Cruelty and Incompatibility with Human Dignity

The objection holds that the *hudūd* are harsh corporal punishments that degrade the human being and cannot be reconciled with the dignity God has given the children of Adam or with the sensibilities of modern societies. It can be answered in five ways, three drawn from *al-Qabas* and two from Ibn al-‘Arabī’s other work and from later scholars.

First, judging a punishment apart from its objective is a methodological error. For Ibn al-‘Arabī the punishments are “restraints and deterrents”, legislated “for setting people right” and to preserve “the principle of [the inviolability of] blood” and “the principle of [the inviolability of] property”.⁽¹⁾ To look at the pain of the offender without looking at the lives, property and honour of others is a partial view. The dignity to which the objection appeals belongs first to the victim, the human being who, “were he weighed against the entire world, would outweigh it”.⁽²⁾ A penal system that spares the offender while leaving the victim’s blood without consequence protects the aggressor at the expense of the victim.

Second, dignity is preserved within the punishment itself. Ibn al-‘Arabī reports from the scholars of the school that God “did not legislate, in the *hudūd*, the alteration of form and physical constitution”, meaning beyond what the text prescribes, so that even the beard of the false witness may not be shaved.⁽³⁾ Mutilation is forbidden because it is “torment”, and it is “exceeding the punishment or departing from its form”.⁽⁴⁾ Flogging is moderate, with a whip “between two whips”, spread over the back and avoiding the vital places; greater severity is allowed only when people persist in evil, which is itself an application of the proportion between punishment and offence.⁽⁵⁾ The blood-money of a free person is fixed by the Law “out of respect for it and for its seat, above the humiliation of being marketed and the indignity of being appraised”.⁽⁶⁾ And reproach after punishment is forbidden: “let him flog her the *ḥadd* and not reproach [her]”.⁽⁷⁾

Third, mercy surrounds the punishment before and after it. Before it stand knowledge of the prohibition, the removal of doubt, verification, acceptance of retraction, concealment, and pardon before the case reaches the authority. After it come repentance and expiation, and the place of mercy becomes fixed, “for the place of anger has passed”; only the imam refrains from the funeral prayer, to deter others.⁽⁸⁾ The *ḥadd* thus stands at the end of a long path on which the offender is repeatedly offered a way out. Al-Jāsir reached the same conclusion: “it has become clear that mercy precedes and follows them”,⁽⁹⁾ in Ibn al-‘Arabī, however, this mercy is found within the rulings of the chapters themselves, not inferred from outside them.

Fourth, the objection misplaces mercy. Ibn al-‘Arabī explained the command “let no compassion for them seize you in the religion of God” (Q 24:2) as covering both of the views of the early authorities: “no one may be moved by compassion for a fornicator to drop the *ḥadd* or lighten it”.⁽¹⁰⁾ Compassion that cancels the punishment is compassion for the offender at the expense of the community and of the offender’s own reform. Ibn Taymiyya likened the ruler who carries out the *ḥadd* to the father who disciplines his child out of mercy, and to the physician who gives a bitter medicine: the one who refrains from discipline “as the mother suggests out of tenderness” ruins the child.⁽¹¹⁾

Fifth, a comparison between punishments exposes the inconsistency of the objection. Whoever accepts a severer punishment cannot consistently reject a lesser one. ‘Awda used this argument: “whoever does not consider the death penalty abhorrent has no right to consider the penalty of amputation abhorrent in any way”.⁽¹²⁾ The argument binds those who accept capital punishment. A similar method of argument appears in *al-Qabas* in another setting: Ibn al-‘Arabī bound the heretics (*malāhida*) who denied the effect of washing against the evil eye to what they themselves accepted of the specific properties of medicines, between which and the bodily constitution they saw no correspondence.⁽¹³⁾

3.2 The Objection Based on the Hadith of the ‘Uranīyūn

Some take the hadith of the ‘Uranīyūn, in which the Prophet had their hands and feet cut off and their eyes put out, as evidence of cruelty in the Sunna. The facts of the case, however, are part of its answer. According to al-Bukhārī, a group from ‘Urayna fell ill in Medina, and the Prophet allowed them to go to the camels of charity and drink their milk and urine as treatment; they then “killed the herdsman and drove off the camels”, and were brought back and punished.⁽¹⁴⁾

(1) Ibn al-‘Arabī, *al-Qabas*, pp. 802, 1030.

(2) Ibn al-‘Arabī, *al-Qabas*, p. 978.

(3) Ibn al-‘Arabī, *al-Qabas*, p. 888.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 597.

(5) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 3, pp. 334-335.

(6) Ibn al-‘Arabī, *al-Qabas*, p. 986.

(7) Ibn al-‘Arabī, *al-Qabas*, p. 1018; the print reads *fa-l-yaḥliḍhā*, a misprint for *fa-l-yajliḍhā*. The hadith is reported by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, p. 83, no. 2234; and Muslim, *Ṣaḥīḥ*, vol. 3, p. 1328, no. 1703.

(8) Ibn al-‘Arabī, *al-Qabas*, p. 1015.

(9) al-Jāsir, *Tiryāq*, p. 202.

(10) Ibn al-‘Arabī, *Aḥkām al-Qur’ān*, vol. 3, p. 334.

(11) Ibn Taymiyya, *al-Siyāsa al-shar‘iyya*, p. 79.

(12) ‘Awda, *al-Tashrī‘ al-jinā‘ī al-islāmī*, vol. 1, p. 655.

(13) Ibn al-‘Arabī, *al-Qabas*, p. 1125.

(14) al-Bukhārī, *Ṣaḥīḥ*, vol. 2, p. 130, no. 1501; the hadith is also reported by Muslim, *Ṣaḥīḥ*, vol. 3, p. 1296, no. 1671.

In a narration reported by Muslim, Anas said: “The Prophet only put out their eyes because they had put out the eyes of the herdsmen.”⁽¹⁾

Ibn al-‘Arabī cited the view of Ibn Shihāb that this was “at the beginning of Islam, and then it was abrogated by the prohibition of mutilation”, and rejected it: “this is not correct; the Prophet only did to them what they had done to the herdsmen”.⁽²⁾ In *al-Masālik* he preferred the report of Anas: “it was retaliation, and that is correct; for that was a mere supposition on Ibn Shihāb’s part, and Anas knew the case better”. He also reports there that God then revealed concerning them the verse “The recompense of those who wage war against God and His Messenger” (Q 5:33).⁽³⁾

The answer is therefore threefold. First, the act was retaliation in kind, not mutilation: mutilation in his definition is exceeding the punishment or departing from its form, whereas retaliation is equality without excess. Second, the punishment answered a combination of crimes: the betrayal of those who had treated them, the murder and mutilation of the herdsman, and armed robbery of public property, the very crime of *hirāba* for which the Qur’ān prescribes the cutting off of hands and feet (Q 5:33). Third, equality in the manner of killing is itself a principle in his treatment of retaliation, as in the case of the Jew who “crushed a girl’s head, and his head was crushed between two stones; so [the report] mentioned the ruling and the cause”.⁽⁴⁾ The hadith is thus evidence for justice, not against it.

3.3 The Call to Abolish Retaliation in the Name of Mercy toward the Killer

There are calls today to abolish the death penalty out of mercy for the killer, on the grounds that it is irreversible and does not deter. *Al-Qabas* answers in four ways.

First, the objective of retaliation is the life of the community. Commenting on “In retaliation there is life for you, people of understanding” (Q 2:179), Ibn al-‘Arabī explains that the Arabs “did not take their right with justice ... so God, exalted be He, legislated the exaction of the right in killing with equality”,⁽⁵⁾ and that “the killer, if he knows that he will be killed, refrains”.⁽⁶⁾ He reports from the scholars of the school that dropping retaliation for killing with a heavy object “demolishes the principle of retaliation and enables enemies to overcome enemies”.⁽⁷⁾ In *Ahkām al-Qur’ān* he contrasted the pre-Islamic saying “killing is the best preventive of killing” with the Qur’ānic statement, noting “a vast gulf in eloquence and justice” between them:⁽⁸⁾ the Qur’ān does not ground life in killing as such, but in equality, which ends the escalation of revenge.

Second, the Law does not confine the matter to killing. It gives the next of kin “the choice between accepting the blood-money and killing”, makes blood-money a special grant to this community “out of kindness to it”,⁽⁹⁾ and opens the door of pardon. In his debate on slanderous accusation both parties accepted that retaliation is dropped by pardon: “if it were the right of the human being, it could be dropped by pardon, like retaliation”.⁽¹⁰⁾ The Qur’ān itself calls this arrangement “an alleviation from your Lord and a mercy” (Q 2:178), in relation to earlier laws that knew retaliation without blood-money.

Third, the abolitionist argument misplaces mercy. In the Sharī‘a mercy toward the killer is legitimate in the hands of the next of kin, who may pardon or accept blood-money, not in the hands of those who would cancel the heirs’ right and expose the community to private revenge. Ibn ‘Āshūr observed that if the victim’s family is denied satisfaction, “vendettas and crimes hardly end and the order of the community cannot be stable”, and that the Sharī‘a therefore undertook this satisfaction itself.⁽¹¹⁾

Fourth, deterrence from bloodshed is common to all revealed laws, since “God legislated retaliation in every religion”.⁽¹²⁾ As for the fear of error, the system answers it through its safeguards of proof: examination of the confessor, acceptance of retraction, the dropping of the penalty in cases of doubt, and the victim’s family’s right to pardon.

3.4 The Denial of Stoning on the Ground That It Is Not Mentioned in the Qur’ān

A widely repeated objection denies stoning because it is not mentioned in the Qur’ān. Ibn al-‘Arabī sets out ten principal hadiths on stoning, among them the words of ‘Umar: “Beware lest you perish over the verse of stoning, that someone should say, ‘We do not find two *hadd*s in the Book of God’; the Messenger of God stoned, and we stoned.”⁽¹³⁾ ‘Umar thus anticipated the objection itself and answered it with the practice of the Prophet and the Companions.

(1) Muslim, *Ṣaḥīḥ*, vol. 3, p. 1298, no. 1671.

(2) Ibn al-‘Arabī, *al-Qabas*, p. 597.

(3) Ibn al-‘Arabī, *al-Masālik*, vol. 7, p. 157.

(4) Ibn al-‘Arabī, *al-Qabas*, pp. 983-984. The hadith is reported with similar wording by al-Bukhārī, *Ṣaḥīḥ*, vol. 9, pp. 4-5, no. 6876; and Muslim, *Ṣaḥīḥ*, vol. 3, p. 1299, no. 1672.

(5) Ibn al-‘Arabī, *al-Qabas*, p. 983.

(6) Ibn al-‘Arabī, *al-Qabas*, p. 986.

(7) Ibn al-‘Arabī, *al-Qabas*, p. 1001.

(8) Ibn al-‘Arabī, *Ahkām al-Qur’ān*, vol. 1, p. 89.

(9) Ibn al-‘Arabī, *al-Qabas*, pp. 906, 989.

(10) Ibn al-‘Arabī, *al-Qabas*, p. 1019.

(11) Ibn ‘Āshūr, *Maqāṣid al-sharī‘a*, vol. 3, p. 551.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 989.

(13) Ibn al-‘Arabī, *al-Qabas*, p. 1006. The hadith is reported with similar wording by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, p. 168, no. 6829; and Muslim, *Ṣaḥīḥ*, vol. 3, p. 1317, no. 1691.

Ibn al-‘Arabī states that “stoning is an established *sunna* and a principle in the Law that preceded [Islam] in earlier religions and was confirmed by Islam after them”,⁽¹⁾ and that “there is no disagreement about it among the imams”, except for a sect of Berbers on the mountain of Tripoli, whom he describes as having “disbelieved in God and His Messenger” while cloaking themselves in the word of Islam, and who, among other aberrations such as holding ablution to be an innovation, “hold that stoning is dropped”. It follows from his statement that their dissent does not break the consensus.⁽²⁾

The relationship between the Qur’ān and the Sunna on this question is also a matter of legal theory. Ibn al-‘Arabī rejected the view of “some people” that stoning abrogated the earlier ruling of confining the unchaste woman in the house, on the ground that “confinement in houses was a ruling extended to a terminus, and every ruling extended to a terminus that then reaches it: its ending is not abrogation”.⁽³⁾ The verse (Q 4:15) promised “a way”, and the Sunna explained it: “Take from me: God has appointed a way for them.”⁽⁴⁾ There is therefore no conflict between the Qur’ān and the Sunna: the Qur’ān announced a coming ruling and the Sunna delivered it.

Finally, mercy is evident in the hadiths of stoning themselves: in the Prophet’s turning Mā’iz away repeatedly in the hope that he would retract, in his asking Mā’iz’s people about his condition, and in his postponing the punishment of the woman of Ghāmid for the sake of her child, saying: “Then we shall not stone her and leave her child young with no one to nurse him.”⁽⁵⁾

3.5 The Objection of Collective Punishment

Some cite the hadith of the army that will be swallowed by the earth⁽⁶⁾ and the Prophet’s answer, when asked “Shall we perish while the righteous are among us?”: “Yes, when wickedness abounds”⁽⁷⁾ as evidence that the Shari’a punishes the many for the sins of the few. The first step in the answer is to distinguish the punishment that God decrees in His creation from the legal punishment carried out by the authority. The two hadiths concern the former. Ibn al-‘Arabī reconciled them with “No bearer of burdens shall bear the burden of another” (Q 6:164) by stating that “the decisive proofs have established that no one is punished for the sin of another, neither in general nor in particular; but among the sins of the general public and of individuals are collusion in falsehood and the abandonment of forbidding evil”.⁽⁸⁾ He explained that Mālik placed after the hadith the saying reported by ‘Umar, “God does not punish the general public for the sin of individuals, but when evil is done openly they all deserve punishment”, because “he included ‘Umar’s statement after it on account of the conflict between the unqualified hadith and the apparent sense of the Qur’ān”.⁽⁹⁾ Punishment does not pass from the offender to another; the silent are held accountable for their own sin, the abandonment of forbidding evil.

In legal punishment no one is held liable for another’s crime. Retaliation is postponed for a pregnant woman because “she has another being with her that has not deserved punishment”.⁽¹⁰⁾ The liability of the paternal kin (*‘āqila*) for blood-money in accidental killing is not a punishment of others but a financial liability excepted, by consensus, from a principle that Ibn al-‘Arabī stated: “no bearer of burdens bears the burden of another, and no relative is bound to pay money on behalf of his relative without his consent in any ruling of the Law, except the *‘āqila*, which is excepted by consensus”.⁽¹¹⁾ For the same reason, as noted above, Ibn al-‘Arabī did not make the *‘āqila* liable for a killing that the offender confessed to have committed by mistake.

3.6 The Claim That Islamic Sanctions Are Purely Retributive and Neglect Reform

Modern penology often defines the purpose of punishment as the rehabilitation of the offender and presents the *ḥudūd* as purely retributive. The system described above answers this claim in four ways.

First, the system as a whole aims at setting people right: the *ḥudūd* were laid down “for setting people right”, and this extends even to those who bear no obligation. The reform of the offender is part of this aim.⁽¹²⁾

Second, the reform of the offender is a declared objective. The Prophet turned away the confessor “in the hope that he would retract”, the repentance of the armed robber before capture is accepted to bring him back from his state, and

(1) Ibn al-‘Arabī, *al-Qabas*, p. 1002.

(2) Ibn al-‘Arabī, *al-Qabas*, p. 1009.

(3) Ibn al-‘Arabī, *al-Qabas*, p. 1009.

(4) Ibn al-‘Arabī, *al-Qabas*, p. 1005. The hadith is reported by Muslim, *Ṣaḥīḥ*, vol. 3, p. 1316, no. 1690.

(5) Ibn al-‘Arabī, *al-Qabas*, pp. 1004, 1007, 1011. The words about the woman of Ghāmid are reported with similar wording by Muslim, *Ṣaḥīḥ*, vol. 3, p. 1322, no. 1695.

(6) al-Bukhārī, *Ṣaḥīḥ*, vol. 3, pp. 65-66, no. 2118.

(7) al-Bukhārī, *Ṣaḥīḥ*, vol. 4, p. 138, no. 3346.

(8) Ibn al-‘Arabī, *al-Qabas*, p. 1174.

(9) Ibn al-‘Arabī, *al-Qabas*, p. 1173. The editor identifies this ‘Umar, from the *Muwatta’*, as ‘Umar ibn ‘Abd al-‘Azīz, who introduces the saying with the words “it used to be said” (p. 1173, n. 4).

(10) Ibn al-‘Arabī, *al-Qabas*, p. 985.

(11) Ibn al-‘Arabī, *al-Qabas*, p. 975. On the liability of the *‘āqila* as mutual support rather than punishment, see al-Abharī, *Sharḥ al-Mukhtaṣar al-kabīr li-Ibn ‘Abd al-Ḥakam*, vol. 3, p. 420: “the liability of the *‘āqila* is only by way of mutual support (*muwāsāt*)”.

(12) Ibn al-‘Arabī, *al-Qabas*, p. 802.

the one who seeks a fatwa is spared punishment and reproach. Ibn 'Āshūr stated that by punishment "the wickedness that drove the offender to the crime is removed from his soul",⁽¹⁾ and that "the Sharī'a is not vindictive".⁽²⁾ He also acknowledged that in retaliation the reform of the offender is lost, since the satisfaction of the victim is given precedence where the two cannot be combined.⁽³⁾ Reform is therefore one objective among others, not the only one.

Third, every sin for which no *ḥadd* or expiation is prescribed falls under *ta'zīr*, whose very definition, as reported by Ibn al-'Arabī from al-Zajjāj and by Ibn Farḥūn, is discipline for reform and deterrence; its measure is not fixed by the texts, so that it can be adjusted to the offender and the offence.

Fourth, the punishment serves the offender beyond this world, as an expiation for him. A system that pursued rehabilitation alone would neglect the victim, whom reparation and satisfaction serve, and the community, which deterrence protects. The strength of the system described by Ibn al-'Arabī lies in joining deterrence, reparation and reform, not in sacrificing any of them to the others.

Conclusion

1. Answers to the Research Questions

1. The objectives of punishment according to Ibn al-'Arabī are four. Their root is the preservation of the necessities and the setting right of people, and they are served by deterrence of the offender and of others, reparation of the victim's right, and the reform of the offender together with mercy. He stated expressly the setting right of people, deterrence, reparation, and the fixing of mercy after the *ḥadd*. The reform of the offender is inferred from his treatment of turning away the confessor in the hope of retraction, accepting the repentance of the armed robber, and removing punishment from the one who seeks a fatwa.

2. These objectives cohere in a single system. Punishment is graded according to the rank of the sin and aggravated when its harm extends to others; rights are divided between God and the human being, pardon operating in the human being's right and the imam in principle exacting God's right; and seven safeguards prevent injustice in enforcement.

3. The tradition completes his account with four objectives: expiation, the satisfaction of the victim and the ending of vendetta, the preservation of public order, and mercy as the intention of the one who punishes.

4. On this basis the six objections are answered. Cruelty is excluded by the objective, the safeguards and the right placing of mercy; the punishment of the 'Uranīyūn was retaliation, not mutilation; retaliation is life for the community, together with the choice of blood-money and pardon; stoning is established by the Sunna and by consensus; no one is punished for another's sin; and reform is a declared objective of the system, joined to deterrence and reparation.

2. Findings

1. Ibn al-'Arabī described corporal punishments as "restraints and deterrents", in agreement with al-Māwardī before him, and reported from al-Zajjāj that *ta'zīr* derives from the meaning of restraint.

2. He stated explicitly that deterrence reaches both the one punished and those who witness or hear of the punishment.

3. He divided the Law's ruling on the transgressor into a "ruling of deterrence" and a "ruling of reparation", applied it explicitly to retaliation and blood-money, and called killing "the deterrent object" and blood-money "the reparative substitute". The division corresponds to what later became the maxim of "reparations and deterrents" in al-'Izz ibn 'Abd al-Salām and his student al-Qarāfi, and his statement predates theirs, though I have found nothing to show that they took it from him.

4. He extended the setting right of people by beating to those who bear no obligation, the beast for its correction and the child for training, not as a beating of obligation; these correspond to what al-'Izz ibn 'Abd al-Salām later placed among the deterrents.

5. He made the measure of punishment follow the rank of the sin, as with slanderous accusation below fornication, and aggravated it where harm extends to others or deceit is greater, stating that punishments must be compounded according to the aggravation of offences.

6. He divided punishments between the two rights: retaliation is the human being's right exclusively, amputation for theft is God's, killing by treachery is God's because it concerns the community, and in slanderous accusation the human being's right predominates.

7. He restricted enforcement by seven safeguards: knowledge of the prohibition, purity of the offence and the removal of doubt, verification and the acceptance of retraction, concealment, that no one is punished for another's sin, the prohibition of mutilation and excess, and regard for the objective in application.

8. The texts of *al-Masālik* agree with those of *al-Qabas* on the division between deterrence and reparation, on the thirteenth principle of theft, and on the hadith of the 'Uranīyūn; the comparison also revealed a misprint in the printed *al-Qabas* in the text on the banishment of women, whose correct reading is "the protection for the sake of which the *ḥadd* was legislated".

(1) Ibn 'Āshūr, *Maqāṣid al-sharī'a*, vol. 3, p. 550.

(2) Ibn 'Āshūr, *Maqāṣid al-sharī'a*, vol. 3, p. 549.

(3) Ibn 'Āshūr, *Maqāṣid al-sharī'a*, vol. 3, p. 551.

3. Recommendations

1. A separate study of the punishment for apostasy in Ibn al-‘Arabī’s *al-Qabas*, *al-Masālik* and *Aḥkām al-Qur’ān*, which lies outside the scope of this study.
2. A study of the division between deterrence and reparation among the jurists before Ibn al-‘Arabī, such as al-Māwardī and al-Juwaynī, in order to establish the history of the maxim of “reparations and deterrents”.
3. A new critical edition of *al-Qabas* based on its manuscripts, in view of the misprints found in its printed text in passages on which rulings depend.

Appendix: Loci of the Objectives and Safeguards of Punishment in *al-Qabas*

Objective or safeguard	Locus	Page
Gravity of bloodshed	Opening of the book on blood	977-978
Comprehensiveness of the inviolables	Transgression in hiring riding animals	906
Setting people right, extended to those without obligation	Tenth rule of sales	802
Protection of honour	Questions of slanderous accusation	1018
Restraints and deterrents	Thirteenth principle of theft	1030
Restraining and disabling the offender	Twelfth principle of theft	1029-1030
Deterrence of others	False witness; prayer over the one stoned	888; 1015
Deterrence and reparation	Transgression; retaliation; liability of the thief	906; 986; 1028
Blood-money as kindness to this community	Particularity of retaliation	989
Gradation of punishment	<i>Zihār</i> ; slanderous accusation; killing by treachery with a stick; harm	888; 1018; 1002; 1067
Equality in retaliation	Killing with a stone; wounds	983-984; 997
Right of God and right of the human being	Theft; treachery; slanderous accusation	985; 985; 1019
Choice of the next of kin; later ownership of the stolen item	Retaliation; fifth principle of theft	989-990; 1024-1025
Prohibition of combining two punishments	Eighth principle of theft	1028
Authority of the imam in exaction	Fifteenth ruling of stoning	1017
Knowledge of the prohibition	Hadith of the Bedouin in the mosque	190
Purity of the offence and removal of doubt	Conditions of the <i>ḥadd</i> ; confession; retaliation	1013; 1011; 984
Verification and acceptance of retraction	Rulings of stoning; not imprisoning; confession of accidental killing	1011-1012; 1016; 990
Concealment	Testimony; oaths; hadith of Mā‘iz	888; 675; 1004-1005
No one punished for another’s sin	Pregnant woman; <i>‘āqila</i> ; punishment of the public	985; 975; 1173-1174
Prohibition of mutilation	Book of <i>jihād</i>	596-597
Regard for the objective in application	Banishment of women	1010
Reform and repentance	Armed robber; the woman stoned; turning away the confessor; one seeking a fatwa	1016; 1005; 1011; 498
Mercy fixed after the <i>ḥadd</i>	The imam’s abstaining from prayer	1015

Bibliography

Arranged by the date of the author’s death, earliest first; works whose authors have no recorded date of death follow in alphabetical order. Each work is listed in the edition cited throughout the notes.

I. Primary Sources

The Noble Qur’ān.

1. al-Bukhārī, Abū ‘Abd Allāh Muḥammad ibn Ismā‘īl (d. 256 AH). *Al-Jāmi‘ al-musnad al-ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*. Sulṭāniyya edition (Būlāq, 1311 AH), reproduced by Muḥammad Zuhayr ibn Nāṣir al-Nāṣir. 1st ed. Beirut: Dār Tawq al-Najāt, 1422 AH.
2. Muslim ibn al-Ḥajjāj al-Qushayrī al-Naysābūrī (d. 261 AH). *Al-Musnad al-ṣaḥīḥ (Ṣaḥīḥ Muslim)*. Edited by Muḥammad Fu‘ād ‘Abd al-Bāqī. Cairo: Maṭba‘at ‘Isā al-Bābī al-Ḥalabī wa-Shurakāh, 1374 AH.
3. Abū Dāwūd, Sulaymān ibn al-Ash‘ath al-Sijistānī (d. 275 AH). *Al-Sunan*. Edited by Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamīd. Sidon and Beirut: al-Maktaba al-‘Asriyya, n.d.
4. al-Abharī, Abū Bakr Muḥammad ibn ‘Abd Allāh (d. 375 AH). *Sharḥ al-Mukhtaṣar al-kabīr li-Ibn ‘Abd al-Ḥakam*. Edited by Aḥmad ‘Abd Allāh Ḥasan. 1st ed. Dubai: Jam‘iyyat Dār al-Birr, 2020.

5. al-Māwardī, Abū al-Ḥasan ‘Alī ibn Muḥammad (d. 450 AH). *Al-Aḥkām al-sulṭāniyya*. Cairo: Dār al-Ḥadīth, n.d.
6. Ibn Sīda, Abū al-Ḥasan ‘Alī ibn Ismā‘īl al-Mursī (d. 458 AH). *Al-Muḥkam wa-l-muḥīṭ al-a‘zam*. Edited by ‘Abd al-Ḥamīd Hindāwī. 1st ed. Beirut: Dār al-Kutub al-‘Ilmiyya, 1421 AH.
7. al-Ghazālī, Abū Ḥamid Muḥammad ibn Muḥammad (d. 505 AH). *Al-Mustasfā*. Edited by Muḥammad ‘Abd al-Salām ‘Abd al-Shāfi. 1st ed. Beirut: Dār al-Kutub al-‘Ilmiyya, 1413 AH.
8. Ibn al-‘Arabī, Abū Bakr Muḥammad ibn ‘Abd Allāh al-Ma‘āfirī (d. 543 AH). *Al-Qabas fī sharḥ Muwaṭṭa’ Mālik ibn Anas*. Edited by Muḥammad ‘Abd Allāh Walad Karīm. 1st ed. Beirut: Dār al-Gharb al-Islāmī, 1992.
9. Ibn al-‘Arabī (d. 543 AH). *Al-Masālik fī sharḥ Muwaṭṭa’ Mālik*. Read and annotated by Muḥammad ibn al-Ḥusayn al-Sulaymānī and ‘Ā’isha bint al-Ḥusayn al-Sulaymānī. 1st ed. Beirut: Dār al-Gharb al-Islāmī, 1428 AH.
10. Ibn al-‘Arabī (d. 543 AH). *Aḥkām al-Qur’ān*. Revised and annotated by Muḥammad ‘Abd al-Qādir ‘Atā. 3rd ed. Beirut: Dār al-Kutub al-‘Ilmiyya, 1424 AH.
11. al-‘Izz ibn ‘Abd al-Salām, ‘Abd al-‘Azīz al-Sulamī (d. 660 AH). *Qawā‘id al-aḥkām fī maṣāliḥ al-anām*. Revised and annotated by Ṭāhā ‘Abd al-Ra‘ūf Sa’d. New corrected ed. Cairo: Maktabat al-Kulliyāt al-Azhariyya, 1414 AH/1991.
12. Ibn Khallikān, Abū al-‘Abbās Aḥmad ibn Muḥammad (d. 681 AH). *Wafayāt al-a‘yān wa-anbā’ abnā’ al-zamān*. Edited by Iḥsān ‘Abbās. Beirut: Dār Ṣādir; vol. 4: 1st ed., 1971.
13. al-Qarāfi, Shihāb al-Dīn Aḥmad ibn Idrīs (d. 684 AH). *Al-Dhakhīra*. Edited by Muḥammad Ḥajjī et al. 1st ed. Beirut: Dār al-Gharb al-Islāmī, 1994.
14. al-Qarāfi (d. 684 AH). *Anwār al-burūq fī anwā’ al-furūq*. Beirut: ‘Ālam al-Kutub, n.d.
15. Ibn Taymiyya, Taqī al-Dīn Aḥmad ibn ‘Abd al-Ḥalīm (d. 728 AH). *Al-Siyāsa al-shar‘iyya fī iṣlāḥ al-rā’i wa-l-ra’iyya*. 1st ed. Saudi Arabia: Ministry of Islamic Affairs, Endowments, Da‘wa and Guidance, 1418 AH.
16. al-Dhahabī, Shams al-Dīn Muḥammad ibn Aḥmad (d. 748 AH). *Siyar a‘lām al-nubalā’*. Edited by Shu‘ayb al-Arna‘ūt et al. 3rd ed. Beirut: Mu’assasat al-Risāla, 1405 AH.
17. Ibn Qayyim al-Jawziyya, Muḥammad ibn Abī Bakr (d. 751 AH). *I‘lām al-muwaqqi‘īn ‘an rabb al-‘ālamīn*. Edited by Muḥammad Ajmal al-Iṣlāḥī. 2nd ed. Riyadh and Beirut: Dār ‘Atā’āt al-‘Ilm and Dār Ibn Ḥazm, 1440 AH.
18. al-Shāfi‘ī, Abū Ishāq Ibrāhīm ibn Mūsā (d. 790 AH). *Al-Muwāfaqāt*. Edited by Abū ‘Ubayda Mashhūr ibn Ḥasan Āl Salmān. 1st ed. al-Khubar: Dār Ibn ‘Affān, 1417 AH.
19. Ibn Farḥūn, Burhān al-Dīn Ibrāhīm ibn ‘Alī al-Ya‘murī (d. 799 AH). *Al-Dībāj al-mudhhab fī ma‘rifat a‘yān ‘ulamā’ al-madhhab*. Edited by Muḥammad al-Aḥmadī Abū al-Nūr. Cairo: Dār al-Turāth, n.d.
20. Ibn Farḥūn (d. 799 AH). *Tabṣirat al-ḥukkām fī uṣūl al-aqḍiyya wa-manāḥij al-aḥkām*. 1st ed. Egypt: Maktabat al-Kulliyāt al-Azhariyya, 1406 AH.

II. Secondary Sources

21. ‘Awda, ‘Abd al-Qādir (d. 1374 AH). *Al-Tashrī‘ al-jinā‘ī al-islāmī muqāraranan bi-l-qānūn al-waḍ‘ī*. Beirut: Dār al-Kātib al-‘Arabī, n.d.
22. Ibn ‘Ashūr, Muḥammad al-Ṭāhir (d. 1393 AH). *Maqāṣid al-sharī‘a al-islāmiyya*. Edited by Muḥammad al-Ḥabīb ibn al-Khūja. Qatar: Ministry of Endowments and Islamic Affairs, 1425 AH.
23. Āl Būrnū, Muḥammad Ṣidqī ibn Aḥmad. *Mawsū‘at al-qawā‘id al-fiqhiyya*. 1st ed. Beirut: Mu’assasat al-Risāla, 1424 AH.
24. al-Jāsir, Muṭṭlaq ibn Jāsir. *Tiryāq: naḥwa mu‘ālaja ta‘ṣiliyya li-l-shubuhāt al-fikriyya*. 2nd ed. N.p.: n.pub., Ramaḍān 1442 AH/2021.

III. Theses and Articles

25. ‘Abāba, al-Ṭāhir. “Al-Fahm al-maqāṣidī li-l-sunna al-nabawiyya: Ibn al-‘Arabī namūdḥajan.” *Majallat al-Shihāb*, Institute of Islamic Sciences, University of El Oued, vol. 8, no. 1 (2022): 345-370.
26. Ibn Nāṣir, Muḥammad Maḥdī Lakhḍar. “Al-Manhaj al-istidlālī ‘inda Abī Bakr ibn al-‘Arabī min khilāl kitābihi al-Qabas.” Master’s thesis in Islamic Sciences, supervised by Mas‘ūd Fallūsī. Faculty of Social and Islamic Sciences, University of El Hadj Lakhdar, Batna, 2009-2010.
27. Riyālāt, Zuhayr Ḥāshim. “Al-Tafsīr al-maqāṣidī ‘inda Ibn al-‘Arabī fī tafsīrihi ‘Aḥkām al-Qur’ān’.” Doctoral thesis in Qur’ānic exegesis, supervised by Shaḥāda al-‘Umarī, co-supervised by ‘Abd Allāh al-Badārīna. Faculty of Sharī‘a and Islamic Studies, Yarmouk University, Irbid, 1432 AH/2011.