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The Major Corporal Punishments of Islamic State *Ideology, Theory, Practice*

Beyond Material Support: Promoting ISIL Accountability for Atrocity Crimes

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TABLE OF CONTENTS

INTRODUCTION	3
NOTES ON PRE-MODERN ISLAMIC LEGAL THOUGHT AND PRACTICE	4
THE ISLAMIC STATE'S THEORETICAL UNDERSTANDING OF MAJOR CORPORAL PUNISHMENTS	6
ANALYSIS AND COMPARISON TO CLASSICAL APPROACHES AND INTERNAL STUDIES	10
CORPORAL PUNISHMENTS IN ISLAMIC STATE PROPAGANDA VIDEOS	13
OFFENSE AND PUNISHMENT	16
State threatening behaviour	
Offences against religion or public morality	
Offenses against individuals	
THE JUDICIAL PROCESS	17
PROPAGANDISTIC PRESENTATION OF CORPORAL PUNISHMENTS TO THE LOCAL AND GLOBAL AUDIENCES	19
CONCLUSION	21

Introduction

The rejection of man-made law is a cornerstone of 'Islamic State' ideology as per the concept of *tawhid al-hakimiyya* (monotheism in judgement), that reserves judgement to God alone.¹ Accordingly, Islamic State referred to pre-modern understandings of *shari'a* or Islamic law when governing its caliphate state in both Iraq and Syria. The rules Islamic State adopted (and adapted) from Islamic legal discourse include harsh corporal punishments known as *hudud*.² Unlike other Islamists, Islamic State seems to have raised the actual execution of these corporal punishments to an essentiality for confirming to the concept of *tawhid al-hakimiyya*. Performing corporal punishments therefore was not simply a way to govern and establish order but became a *raison d'être* for the group and serves as continuous (self-)assurance to prove its Islamic legitimacy. This also served as an argument for Islamic State spokesman Abu Muhammad al-'Adnani who accused other Islamists of apostasy for fighting against the group and its *shari'a* state:

*Remember, O you afflicted by fitnah, before embarking to fight the Islamic State, that there is no place on the face of the Earth where the Shari'ah of Allah is implemented and the rule is entirely for Allah except for the lands of the Islamic State. Remember that if you were able to capture one hand span, one village, or one city from it, the rule of Allah in that area would be replaced with the rule of man. Then ask yourself, "What is the ruling on someone who replaces or is a cause for the replacement of the rule of Allah with the rule of man?" Yes, you become a disbeliever because of that.*³

This paper aims to examine Islamic State's penal code and legal proceedings on major corporal punishments in order to understand certain acts of violence as part of a judicial process, to identify responsible institutions within the group, and to distinguish people who underwent such punishments as victims of the group's legal policy. While resulting from a judicial process, the harsh punishments that include death penalties by decapitation or stoning as well as bodily harm through amputation of body-parts as well as lashings might constitute the war crime of sentencing or execution without due process. Amongst others, jurisdiction might also arise regarding crimes against humanity and war crimes like murder, mutilation, or cruel treatment detailed in Article 8 (2) c in the Rome Statute.⁴ In a case that included the implementation of corporal punishments derived from *shari'a*, the International Criminal Court tried a member of the Malian group Ansar al-Din's morality police (*hisba*) and found him guilty of a number of war crimes and crimes against humanity.⁵

In a first step, Islamic State's theoretical discourse on corporal punishments will be discussed based on official documents that the group either distributed locally or published online. Part of this analysis is a comparison with pre-modern interpretations of Islamic law that aims to identify particular ideological or regional influences. In a second step, officially released Islamic State videos that show corporal punishments in a judicial context will be identified

1 Arguably the most important work that explains this aspect of Islamic State ideology is al-Iraqi, Abu Suhayb: Polytheism in Obedience, Media Office of Ninawa Province – Islamic State of Iraq and Sham, 2012. Here, the given definition of polytheism in obedience is "taking a law-giver other than God or accepting a partner to God in law-giving, and being content with his judgement, and obeying it in allowing and forbidding." (p. 8).

2 Revkin, Mara: *The Legal Foundations of the Islamic State*; in: *The Brookings Project on U.S. Relations with the Islamic World*, Analysis Paper No. 23, July 2016, p. 12f.

3 Al-'Adnani, Abu Muhammad: Oh our People, Respond to God's Call, al-Furqan Media, June 2015. The audio was accompanied by a written translation by al-Hayat that is quoted above.

4 International Criminal Court: Element of Crimes, The Hague 2011.

5 International Criminal Court: Press Release Situation in Mali: Mr Al Hassan convicted of war crimes and crimes against humanity committed in Timbuktu, 26 June 2024.

based on a media-linguistic approach. This excludes videos of ad-hoc or staged executions of combatants or civilians who were in all likelihood killed without any judicial process due to their out-group status as ‘original disbelievers’ or ‘members of an apostate group’.⁶ In a third step, these videos will be analysed with a view to understanding Islamic State’s practical implementation of its theory on corporal punishments with regard to legal mechanisms and institutions as well as the propagandistic portrayal of corporal punishments.

Notes on pre-modern Islamic legal thought and practice

Shari’a is often translated as Islamic law; the term’s full meaning, however, is far wider and more encompassing and points to divine origin. Calder describes *shari’a* as designating “a prophetic religion in its entirety” and as “the rules and regulations governing the lives of Muslims, derived in principal from the Kur’ān and ḥadīth” within Muslim discourse.⁷ The interpretation and further development of these rules is a human undertaking known as *fiqh* or jurisprudence. Over the centuries of Islamic history, a process or rather processes of deriving judgements from the Quran and the Prophetic example of Muhammad developed. Methodological differences led to the establishment of numerous legal traditions – the schools of jurisprudence (*madhahib*). These differences include questions on legal emphasis with regard to Quran and Prophetic example, the authenticity of specific reports on Muhammad’s life as well as the legitimacy of core methods, namely consensus (*ijma*), analogy (*qiyas*), and imitation (*taqlid*).⁸ Accordingly, individual judges – even belonging to the same legal school – may give different verdicts for the same problem.⁹

The pre-modern legal discourse of all schools identifies a number of offenses against *shari’a* as punishable by bodily harm. Corporal punishments are usually divided into three distinct categories: *qisas*, *hudud* and *ta’zir*. This paper focuses on the major punishments of *qisas* and *hudud*. *Qisas* or retaliation deals with offenses against a person, namely killing or wounding somebody, and is a form of retributive justice (“an eye for an eye”). The harmed party can waive retribution with or without financial compensation. *Hudud*, possibly best translated as fixed punishments, derive from Quranic verses that mention specific punishments for corresponding acts. Due to their Quranic origin, these acts form infringements upon God’s right in Islamic legal thought. Accordingly, harmed parties usually cannot waive such punishments. *Hudud* offenses are:

- theft (*sariqa*) punishable by amputation of a hand;
- robbery (*hiraba*) punishable by banishment, cross-amputation, death and crucifixion;
- fornication (*zina*) punishable by 100 lashes for the non-*muhsan* and death by stoning for the *muhsan*¹⁰;

6 Cf. al-Tamimi, Aymenn Jawad: The Islamic State and its Treatment of “Out Groups”. A Comparative Analysis, in: Ashraph, Sareta, Carmen Cheung Ka-Man, and Joana Cook, ed(s). Holding ISIL Accountable: Prosecuting Crimes in Iraq and Syria, The Hague 2024, pp. 6-30.

7 Calder, Norman / Hooker, Michael Barry: *Shari’a*, in: Encyclopaedia of Islam², Vol. 9, Leiden 1997, pp. 320-328; 320.

8 Schacht, Joseph: An Introduction to Islamic Law, New York 1982, pp. 15-68; Hallaq, Wael B.: An Introduction to Islamic Law, New York 2009, pp. 14-56.

9 The surviving schools of jurisprudence in Sunni Islam are Hanafism, Malikism, Shafiism, and Hanbalism.

10 *Muhsan* is a legal term that includes those married, those previously married, and in some traditions male owners of female slaves who engage in sexual intercourse with said enslaved.

- unprovable accusations of zina (*qadhif*), punishable by 80 lashes;
- and drinking alcohol (*shurb al-khamr*), punishable by 40 to 80 lashes.

At least some legal traditions also include apostasy (*ridda*), punishable by death. *Ta'zir* or discretionary punishment pertains to instances of above offenses in which guilt is not established without doubt as well as lesser offenses.¹¹

With the exception of the lesser punishments of *ta'zir*, corporal punishments are subject to strict rules with regard to the status of the accused and the procedure to arrive at a verdict. Firstly, the court has to establish that the accused person acted with intent (*qasd*), was free to choose his action (*qudra*) and had knowledge (*'ilm*) of the prohibition of the act. The condition of knowledge completely excludes children and the mentally impaired from corporal punishments.¹² Fully capable adults on the other hand are obliged to know the regulations of *shari'a*. An excuse due to ignorance of these regulations is therefore only acceptable if the accused is a new convert or someone who recently migrated to a Muslim community after having lived an unsettled lifestyle.¹³ The condition of free will further limits the execution of corporal punishments: a person forced to commit an offense is exempted from punishment due to having committed the offence under duress (*ikrah*). Uncertainty in one of the three categories have the legal consequence of doubt (*shubha*) that averts the execution of corporal punishments. This includes cases of different interpretation (*ikhtilaf*) or ignorance of the circumstances (*jahl al-hal*).¹⁴ Secondly, the establishment of guilt has to follow correct legal proceedings. The accused has to make his admission in court, so that the judge can point out the right to revoke confessions. This holds true for testimonies as well. Both admission and testimony must be precise with regard to the offense, describing all relevant acts and calling the offense by its legal term. Admission or two (in case of fornication four) closely matching witness statements establish guilt. Even slight discrepancies lead to the cancellation of corporal punishment.¹⁵ The use of torture to elicit admissions is impermissible.¹⁶ In theory, the high burden of proof in matters of corporal punishment makes actual execution without the willing admission of alleged culprits extremely difficult and therefore a relatively seldom occurrence.¹⁷ This is best explicable by the pre-modern nature of corporal punishments in Islam, closely corresponding to Foucault's observations on medieval Europe:

*(A) crime was voluntary harm done to another, but it was not only this. Neither was it only a wrong and a damage done to the interests of the whole society. The crime was crime insofar it attacked the sovereign; it attacked his rights and his will present in the law and it thereby attacked his strength and physical body.*¹⁸

The ruler had to uphold his power over society by symbolically deterring the public from major offenses by the execution of public punishments, as "the ritual deployment of his strength on the scaffold was the ceremonial reversal of the crime. In the criminal's punishment one witnessed the ritual and well-ordered reconstitution of power in its integrity."¹⁹

11 Peters, Rudolph: *Crime and Punishment in Islamic Law. Theory and Practice from the Sixteenth to the Twenty-first Century*, New York 2005, pp. 30-67; Schacht, Introduction, pp. 175-198.

12 In this legal system, childhood ends with the beginning of puberty.

13 Peters, *Crime and Punishment*, pp. 20-22.

14 Schacht, *Introduction to Islamic Law*, pp. 117f; Peters, *Crime and Punishment*, pp. 22-24, 62.

15 Peters, *Crime and Punishment*, pp. 12-15.

16 Schacht, *Introduction to Islamic Law*, p. 197.

17 Hallaq, Wael B.: *Shari'a. Theory, Practice, Transformations*, New York 2009, pp. 311f.

18 Foucault, Michel: *Abnormal. Lectures at the Collège de France 1974-1975*, London / New York 2003, p. 83.

19 Foucault, *Abnormal*, p. 83.

The executions had to be especially brutal as

[P]unishment had to respond to the excess of the crime and triumph over it. There was a necessary imbalance, therefore, at the very heart of the act of punishment. There had to be a kind of surplus on the side of punishment. This surplus was terror; the terrorizing character of the punishment.²⁰

This ritualistic deterrence was a form of general prevention. It was neither necessary nor intended to punish every single perpetrator of an offense. Corresponding to medieval Europe, offenses in the *hudud* category constitute offenses against God's right as supreme sovereign in pre-modern Muslim legal thought. Muslim rulers were obliged to uphold the divine order and public interest (*maslaha*) through the implementation of *shari'a*. This included above-mentioned major corporal punishments that were justified as protecting meta-objectives of law (*maqasid al-shari'a*), namely:

- religion (*din*);
- life (*nafs*);
- intellect ('*aql*);
- lineage (*nasab*);
- and property (*mal*).

Some traditions include the additional objective honour ('*irdh*').²¹ The paramount importance of safeguarding the public interest led to a ruler-centric application of *shari'a* known as *siyasa* (literally politics) that allowed authorities to ignore both the fixed punishments of *hudud* and aspects of legal doubt when faced with extreme situations.²² This way they could implement corporal punishments on alleged repeat-offenders in above mentioned categories as well as alleged culprits of offenses deemed serious threats to society, namely murder, spying for an enemy power, heretic proselytising, male homosexual fornication (sometimes also seen as a special case of fornication), and sorcery.²³

Islamic State's theoretical understanding of major corporal punishments

Soon after gaining increasing territorial control in both Iraq and Syria in early 2014, Islamic State in Iraq and Sham began circulating leaflets that explained offenses against *shari'a* and the corresponding major corporal punishments to populations under its rule. The earliest instance recorded was in March 2014.²⁴ This type of leaflet seem to have appeared locally during all of 2014 and gained international scrutiny late in the year.²⁵ The leaflet in question by Islamic

20 Foucault, *Abnormal*, p. 83.

21 Kamali, Mohammad Hashim: *Shari'ah Law. An Introduction*, Oxford 2008, pp. 124-127.

22 For a historical complaint about the increase in highway robbers due to strict application of rules in trials cf. Khan, Nadeem Elias: *Nūr ad-Dīn Zankī and 'Umar al-Mallā'. Awqāf, ḡihād, and Religious Fraternization in the 12th Century*, in: *Frühmittelalterliche Studien* 50 (2016), pp. 329-359, 355f.

23 Peters, *Crime and Punishment*, pp. 65-67.

24 Specimen 7X: *Hudud punishments, al-Bab, Aleppo Province (March 2014: pre-Caliphate era)*; in: al-Tamimi, Aymenn Jawad: *Archive of Islamic State Administrative Documents*. The low quality of the picture makes the leaflet almost unreadable, but it seems to confirm to later leaflets.

25 The document appeared online on 15 December 2014 according to the *Middle East Media Research Institute: Islamic State (ISIS) Publishes Penal Code, Says It Will Be Vigilantly Enforced*, 17 December 2014.

State's Aleppo Province is entitled *Statement on hudud*.²⁶ It briefly introduces core Islamic State ideology based on Quranic verses and postulates that there is no rule better than divine law as God is all-knowing; submission to and implementation of *shari'a* is obligatory; and not ruling by *shari'a*, avoiding judgement according to it or being discontent with judgement constitutes disbelief in Islam. Islamic State in turn "believing in God (...), disbelieving in the rules made up by those created from dust, pledges to God to rule on his earth and between his servants according to his *shari'a*". Below this declaration, a tabular list enumerates eleven offenses and the corresponding punishments.

Insulting God	Death
Insulting Muhammad	Death, even after repentance
Insulting Islam	Death
Fornication	Stoning to death for the <i>muhsan</i> , 100 lashes and expatriation for one year for the non- <i>muhsan</i>
Male homosexual fornication	Death for the one who does it and for the one to whom it is done
Theft	Amputation of the hand
Drinking alcohol	80 lashes
False accusation of fornication	80 lashes
Spying for the interest of the disbelievers	Death
Apostasy from Islam	Death
Highway robbery	<ol style="list-style-type: none"> 1. Death and crucifixion for the one who kills and takes money 2. Death for the one who kills 3. Amputation of the right hand and the left foot for the one who takes money 4. Expatriation for the one who frightens people

In 2015, Islamic State's in-house press *Maktabat al-himma* published a poster entitled "The *hudud of shari'a*".²⁷ The likely authors of this poster are religiously educated Islamic State members who formed the Office for Research and Studies (*Maktab al-buhuth wa-l-dirasat*) in late 2014 and penned a number of internally circulated studies on corporal punishments that were later leaked to the public via the Knowledge Heritage Foundation of Islamic State dissidents.²⁸ Islamic State defines *hudud* as "the *shari'a* decreed punishments for disobedience to God",

²⁶ Specimen 1C: List of hudud punishments (Aleppo Province); in: al-Tamimi, Aymenn Jawad: *Archive of Islamic State Administrative Documents*. The author's translation presented here slightly differs from al-Tamimi's.

²⁷ *Maktabat al-himma: The hudud of shari'a*, 2015. The poster is dated Jumada al-akhira 1436, corresponding to March/April 2015, but to the author's knowledge only appeared online in August of that year.

²⁸ al-Tamimi, Aymenn Jawad: *The Islamic State Research Office's Self-History*, 04 December 2018. The author thanks al-Tamimi for stressing the need to include the Office in this research paper. A number of studies by the Office will feature in the discussion in the next subchapter.

which are the punishments for “fornication, false accusation of fornication, male homosexual fornication, theft, robbery, and drinking alcohol”. In a subsequent paragraph entitled “The wisdom behind implementing hudud”, Islamic State formulates its ideological justification for corporal punishments:

Nobody believes that God has legislated the hudud and then left us the choice between implementing and not implementing them. Rather it is obligatory to know that God has determined the hudud and ordered (us) to execute them. Everyone who abandons the execution of these godly punishments and judges according to positive law is a disbeliever, an oppressor, and an evildoer. There is no doubt that God did not decree the hudud but by great wisdom and for abundant benefits. Through them, the abode of Islam is maintained and security for the Muslims materialises. The Muslim community has agreed that the shari’a was set down to safeguard the following five necessities: Protection of religion, life, honour, property, and reason. The shari’a hudud defend these necessities. Lives are preserved by the hadd of robbery; properties are preserved by the hadd of theft; honour is preserved by the hadd of fornication and the hadd of false accusation of fornication; reason is preserved by the hadd of drinking alcohol. By implementing all of the hudud, religion is preserved. Verily, the hudud are a repellent against the criminal and a restraint for others; healing for the rage of the victim and purification of the repentant offender from his sin.

In the following, Islamic State describes legal procedures of its hudud cases, including the way guilt is established:

1. **Admission:** *The admission by the offender proves all hudud offenses*
2. **Testimony:** *Testimony of four witnesses proves fornication and male homosexual fornication, testimony of two witnesses proves other offenses; the testimony of women is not considered in hudud*
3. **Pregnancy:** *Pregnancy of an unmarried free woman or a masterless female slave proves fornication*
4. **The smell of alcohol:** *The smell of alcohol in the mouth of the drinker and/or in his vomit prove drinking alcohol.*

The Islamic State further states the necessary conditions for the implementation of the punishment:

1. **Legal capacity:** *The one with legal capacity is the adult of sound mind; hadd punishments are not executed on a child or someone insane.*
2. **Free will/choice:** *There is no hadd punishment for someone (who had been) under compulsion*
3. **Lack of doubt:** *Hudud punishments are averted by doubt*

The rest of the poster shows the six offenses and the corresponding punishments including a definition of the offense, the religious texts that Islamic State relies on, and the punishments. The relevant excerpts are quoted below.

- *Fornication is sexual intercourse between a man and a woman without a marriage contract or sexual intercourse between man and woman in her vulva without marriage or possession of a slave or doubt. (...) Firstly, hadd of the muhsan: A muhsan is a free person with legal capacity who gained carnal knowledge of a woman through marriage or possession of a slave. Ihsan affects men and women, including widower and widow as well as divorcees. The penalty for a muhsan fornicator is stoning until death. (...) Secondly the hadd of the non-muhsan: The penalty for the non-muhsan fornicator is a hundred lashes and expatriation for one year.*
- *False accusation of fornication is accusing a muhsan (male or female) of fornication or male homosexual fornication or denying ancestry. False accusation of fornication also includes testimony against a Muslim or a Muslima in (a case of) fornication lacking the completion of the minimum of testimonies by four witnesses. (...) If the accuser does not have four witnesses (testifying) to the truth of what he accused with, he is punished with 80 lashes in case of being a free person and 40 lashes in case of being a slave.*

- *He is judged to be a sinner and his testimony is not accepted (any longer). This excludes the husband accusing his wife as his testimony equals four testimonies, but the husband is punished with the hadd punishment for false accusation of fornication if there is no proof for what he accused his wife of and she denies (the accusation).*
- *Male homosexual fornication: Sexual intercourse between a man and another man in his rectum. It happens by the penetration of a man's penis into another man's rectum or that of an animal. (...) The punishment for the (male) homosexual fornicator is death, whether he is muhsan or non-muhsan, free or a slave. There has been disagreement on the way of killing the homosexual fornicators. Some companions of the Prophet burned the homosexual fornicators with fire, some stoned them until death and some threw them off the tallest building in the city.*
- *Theft is taking wealth that is not hidden from a safe place (hirz) without any doubt in the matter (e.g. it is not taken by accident). (...) The Muslims have agreed that the hadd punishment for the thief is amputation of the right hand. The hand is amputated below the wrist. Conditions for amputating the hand: Firstly, that the stolen money was in a safe place. (This) means anything customary in protecting wealth and differs as per conditions: A house is a safe place for furniture, a shop is a safe place for goods, and a person is a safe place for his clothes etc. Secondly, that the stolen wealth is honourable. There is no amputation for stealing a music instrument, or pork, or alcohol, or similar things. Thirdly, that the stolen wealth reaches the minimum amount of theft, which is a quarter dinar. A quarter dinar equals a quarter mithqal of gold (about 1.06 g). To know the minimum amount of (stolen money that leads to) amputation, one has to go back to the price of one mithqal of gold at the time of the theft. Fourthly, lack of doubt. Doubts that prohibit amputation include a wife stealing from her husband, taking something that resembles one's property, like taking a bag that looks like one's own bag, or one of the shareholders stealing money that belongs to the company.*
- *Robbery (highway robbery) is going out to take money or to kill or to intimidate by way of force, while it is impossible (for the victim) to seek help. (...) The Quran named highway robbers enemy warriors, slanderers on the earth, and decreed a deterring punishment for them: Death or crucifixion after death or amputation of the hands and feet. Selection of the type of punishment goes back to the opinion of the caliph or the verdict of the judge taking into consideration the differing circumstances.*
- *Alcohol is everything that intoxicates regardless whether it is juice or something else. (...) The hadd punishment for drinking alcohol is 40 lashes, and what is more than 40 is ta'zir, that the caliph considers required in the interest of prevention and deterrence in cases of negligence due to drinking.*

Analysis and comparison to classical approaches and internal studies

Both publications clearly establish the Islamic State's core ideological reasoning for implementing major corporal punishment, namely believing in God as the sole lawgiver and declaring anyone not implementing *shari'a* a disbeliever, the actual execution of corporal punishments being a litmus test proving compliance to God's law. When examining technicalities, comparing the two sources reveals some differences. Only the earlier leaflet mentions apostasy – including forms of blasphemy, murder, and spying as *hudud* offences with fixed punishments. While apostasy is a well-known addition from classical discourse, murder belongs to the category of *qisas* or retaliation, allowing the relatives of the killed to forgive the murderer with or without financial compensation.²⁹ It is possible that Islamic State follows the Shafi'i position that counts murder as a *hadd* offense.³⁰ A possible explanation would be the importance the Shafi'i school holds in Syria and to a lesser extent in Iraq.³¹ Alternatively, Islamic State might have considered murder a serious offense that threatened social cohesion in newly conquered territory and punished murder with execution by default to uphold public interest, thereby including aspects of *siyasa* in its understanding of *hudud*.

One might similarly argue for “spying for the interests of disbelievers”. Yet, the wording makes clear that Islamic State considers spying a form of aiding non-Muslims against Muslims – the eight nullifier of Islam according to the creed of Muhammad b. Abdul Wahhab and therefore a form of apostasy to Islamic State that adheres to Wahhabi thought.³² Strikingly, sorcery – also considered a nullifier of Islam by Muhammad b. Abdul Wahhab – does not feature on the leaflet. While classically often punished in *siyasa*, previous group leadership had stated that sorcery was apostasy by default and punishable by death, a belief that is obviously still prevalent within Islamic State. Sorcery here means making (potential) spouses love or hate each other through supernatural means as well as soothsaying and spiritual healing outside the confines of Quranic healing and supplications (*ruqiya*).³³ Especially the latter aspects touch upon religious differences to parts of the Sunni population under Islamic State control. Group-restricted secret knowledge on spiritual improvement including acts of faith healing are often part of Sufi practices that are common in the Middle East.³⁴ Accusations of sorcery might accordingly be a tool against leadership figures or members of Sufi denominations that are often an out-group to Islamic State anyway due to major creedal differences.³⁵ It is therefore striking that sorcery does not appear on the leaflet while other subcategories of apostasy like “insulting Islam” do. There is no ready explanation for this anomaly. A first main takeaway of the comparison is that the later released poster shows a narrower understanding of *hudud* that is closer to classical approaches.

²⁹ Peters, *Crime and Punishment*, pp. 38-40.

³⁰ Hallaq, *Shari'a*, pp. 310f.

³¹ Immenkamp, *Beatrix: Understanding the branches of Islam. Sunni Islam*, European Parliament Briefing, 2016.

³² Islamic State – Office for Legal Rulings and Research: *Beneficial Reports in the Most Important Aspects of Creed*, 2014/5, pp. 67f. Cf. Aymenn Jawad al-Tamimi: *The Islamic State and the Sunni Community*, Center for Justice and Accountability, 2024.

³³ Peters, *Crime and Punishment*, pp. 67f; “We believe in the disbelief and apostasy of the sorcerer and the obligation to kill him, his repentance is not accepted in the rules of this world after gaining control over him.” Al-Baghdadi, Abu 'Umar: *Say I am upon Clear Truth from my Lord*, al-Furqan Media, March 2007; Office for Legal Rulings: *Beneficial Reports*, pp. 64-66.

³⁴ Jordan, David: *Sufism, subjectivity and parapsychology: refashioning the dirbasha ritual among Sufis in modern Iraq* “*Asiatische Studien – Études Asiatiques*, vol. 75, no. 3, 2021, pp. 831-858.

³⁵ Aymenn Jawad al-Tamimi: *The Islamic State and the Sunni Community*, Center for Justice and Accountability, 2024.

Another noteworthy difference between the two sources is the description of punishment for robbery and drinking alcohol. The leaflet follows the majority opinion with regard to graded punishments for specific forms of robbery. In contrast, the poster follows the Maliki position on robbery that stresses the role of the caliph and individual judges in determining the fitting punishment.³⁶ The Office for Research and Studies considers both positions valid, aligning in principle with the graded punishment but giving leave to the caliph to use crucifixion as deterring punishment for crimes he considers grave enough, even if the precondition of combining killing with robbing does not apply.³⁷ Islamic State includes aspects of *siyasa* in its understanding of *hudud* here. For drinking alcohol, the leaflet stipulates 80 lashes – which is again the majority opinion. The Shafi'i school historically opted for 40 lashes.³⁸ Islamic State tries to balance between both positions on the poster by mandating 40 lashes, with another 40 at the discretion of caliph and judges. When looking at how Islamic State establishes guilt as per the poster, there are two further interesting findings. The group considers pregnancy of women outside of a legal relationship proof for fornication and the smell of alcohol in breath or vomit sufficient proof for drinking. Both of these methods derive from the minority opinion found in the Maliki school and to a lesser extent with Hanbalites. Both considerably widen the possibility to implement the respective corporal punishments.³⁹

In principle, Islamic State seems to follow its neo-Salafi approach to law here. When taking the studies by the Office of Research and Studies into account, this includes the weighing of evidence from the Quran as well as the examples of the Prophet Muhammad and his Companions before comparing classical legal positions by the schools of law and prominent scholars to arrive at the ruling believed to have the best religious evidence. It is possible that this process led to above-quoted positions but there are further aspects to investigate. While the movement to a position closer to the Shafi'i school with regard to drinking alcohol could be explained by the significance of this school in areas ruled by Islamic State in Syria and to a lesser extent Iraq, the Maliki turn of the poster is no response to local demands as that school is mostly found in Northern Africa. The reason could be the influence of North African Salafi-Jihadists joining Islamic State and their early influence on the religious trajectory of the group in 2014.⁴⁰ It is conceivable that at least one of them was amongst the authors of the poster. An even more appealing explanation is a utilitarian use of Maliki positions. In all divergences from majority discourse, choosing the Maliki opinion allows Islamic State greater leverage to mete out corporal punishments by either lowering the burden of proof or giving greater leeway to judges, the caliph himself, and presumably his deputies in the delegated committee as well as provincial governors. The Maliki turn – whatever its reasons – empowered the group to carry out as many corporal punishments as possible.

The ensuing interpretation of rules on major corporal punishments is comparatively harsh, especially as Islamic State does not take into consideration classical legal positions that could hinder or lessen corporal punishments – at least in individual cases. By means of example, neither the Hanafi opinion that drinking alcohol is only punishable when intoxication occurs, nor the minority opinion that non-*muhsan* male homosexual fornicators should only receive

³⁶ Peters, *Crime and Punishment*, p. 58.

³⁷ Islamic State – Office for Legal Rulings and Research: *The Shari'a Rules on Crucifixion*, p. 22.

³⁸ Hallaq, *Shari'a*, p. 316.

³⁹ Peters, *Crime and Punishment*, p. 15; Hallaq, *Shari'a*, p. 316.

⁴⁰ A detailed analysis of Tunisian influx to Islamic State is found in Zelin, Aaron: *Your Sons are at your Service. Tunisia's Missionaries of Jihad*, 2020, pp. 188-232.

100 lashes in concurrence with the rules for heterosexual fornication appear in the discussion. On the contrary, the Office for Research and Studies went to further lengths to widen the scope of major corporal punishments by publishing a lengthy treatise of over 100 pages that argues for the application of *hudud* punishments even on soldiers raiding enemy territory.⁴¹ This position is non-consensual in classical Islamic legal discourse as the group itself shows in the discussion of different positions. The treatise that only targets Islamic State's very own members shows the group's commitment to major corporal punishments on religious grounds unrelated to questions of governing and controlling conquered populations.

Another example for divergences to the extreme side is the definition of *muhsan* that contrary to the classical majority opinion lacks being Muslim as conditions for *ihsan*, thereby following the minority position of Shafi'is and some Hanbalites in considering non-Muslims corporally punishable for fornication.⁴² While this legal understanding threatened free non-Muslims under the group's control with the punishment of stoning, this did not pertain to Yazidi, Christian, or Shiite slaves, as freedom is a precondition to stoning for Islamic State. In an internal study, the group's Office for Research and Studies argued in accordance with classical discourse that the punishment for slaves is half the one for free persons – meaning 50 lashes for fornication as slaves are non-*muhsan*, 40 lashes for false accusation, and 20 to 40 lashes for drinking. This rule excludes apostasy, murder, and stealing where slaves can face the death penalty or amputation of a hand just as free persons.⁴³ Close reading of this work establishes the fact that the position of Islamic State's Office for Research and Studies did not necessarily bind the decision makers behind the officially released rules. While the poster considers intercourse with a female slave as changing the status of the owner to *muhsan*, the authors of the internal study argue that intercourse with a slave is insufficient and only marriage to a free or unfree woman leads to *ihsan*.⁴⁴ Here, the published rule is harsher than internal judicial advice, once more widening the scope for application of corporal punishments – clearly to the convenience of the responsible Islamic State leaders.

The creative interpretation of classical Islamic legal thought by Islamic State becomes especially visible in the treatment of male homosexual fornication on the poster. Male homosexual fornication was not universally understood as a *hadd* offense as there is no specific Quranic text ordering the execution of perpetrators. The multitude of pre-modern opinions on how to execute homosexual offenders clearly shows that there was no fixed punishment for male homosexual fornication. The meta-objective of *shari'a* that is brought forward as a reason for the prohibition of fornication, namely preventing unclear fatherhood and thereby protecting the lineage obviously has nothing to do with homosexual intercourse that evidentially does not lead to the conception of children. Islamic State, blatantly interested in treating male homosexual fornication as a *hadd* offense separate from fornication, rectifies this eventual inconsistency by dropping the well-established meta-objective of lineage for the lesser-known meta-objective of honour that was historically introduced as an explanation for the *hadd* offense of false accusation of fornication.⁴⁵ By expanding the meaning of the known

41 Islamic State – Office for Legal Rulings and Research: The Successful Attainment of Implementing hudud during Invasion and Travel, 2014/5.

42 Peters, Crime and Punishment, pp. 61-64; Hallaq, *Shari'a*, p. 312f.

43 Hallaq, *Shari'a*, pp. 316-322; Islamic State – Office for Legal Rulings and Research: A Rigorous Word on the Rulings of the Slave, 2014/5, pp. 89-106.

44 Ibid. pp. 42f.

45 Kamali, Introduction, p. 126.

meta-objective honour to sexuality in general, Islamic State establishes male homosexual fornication as an offense against a meta-objective of *shari'a*, thereby justifying its inclusion in the *hudud* category. Focusing on male homosexuality is presumably an expression of the group's homophobia. It is also feasible that Islamic State was keen to use the status of male homosexuals as absolute out-group to both its local and global target audiences for propaganda purposes.

Corporal punishments in Islamic State propaganda videos

During its heyday as territorial caliphate, Islamic State had an incredibly high output of propaganda material, including videos and audio messages as well as picture reports and written statements. To illustrate the magnitude of this propaganda, one might point to Winter's groundwork on Islamic State publication frequency that found 1146 media files released during just one month in 2015.⁴⁶ Considering that the implementation of corporal punishments became a litmus test for legitimacy to Islamic State, it is obvious that they featured in the group's propaganda. It is possible to gain the mere information whether Islamic State executed major corporal punishments – and to a lesser extent for which offenses – from photo reports, written statements, local reports, and interviews as Revkin showed.⁴⁷ This study focuses on videos in order to gain a broader understanding of how corporal punishments feature into the governing system of Islamic State with a focus on the relation between the group's theory, practice, and propaganda on corporal punishments. Furthermore, it is of interest to identify responsible institutions, individual victims, and vulnerable groups as well as media strategies used by the Islamic State.

The research corpus consists of official Islamic State videos from Iraq and Syria that were released under the central labels al-Furqan and al-'Itisam or the regional media offices of the 19 core provinces. The author used the supporter website 'Thunder' that includes a streamable and searchable archive of Islamic State material – an "ISIS Netflix" as Ayad so aptly described a predecessor website.⁴⁸ To identify videos that show corporal punishments, the author chose a media-linguistic approach. Based on the assumption that Islamic State would use words linked to major corporal punishments in the titles of videos dedicated to this topic, a number of search terms based on the respective roots of *shari'a*, *hudud*, *hukm*, and *qisas* were entered into the website's search field. The author manually checked the resulting hits for relevance, especially glimpses of a judicial process. This led to the below corpus that is not necessarily exhaustive due to the confines of the identifying method.

⁴⁶ Winter, Charlie: Documenting the Virtual 'Caliphate', Quilliam Foundation, 2015, p. 9.

⁴⁷ Revkin, Legal Foundations, p. 8.

⁴⁸ Ayad, Moustafa: The Propaganda Pipeline. The ISIS Fuouaris Upload Network on Facebook, Institute for Strategic Dialogue, 2020, p. 3.



NAME OF THE PROPAGANDA RELEASE	PROVINCE (MEDIA)	DATE OF RELEASE	FEATURED OFFENSE	SHORTHAND
<i>Executing the shari'a judgement on a Shabih allied to the Nusayri regime after his repentance</i>	Idlib (al-'Itisam)	2013/12	Espionage	VIDEO A
<i>Implementing the hadd for murder</i>	Al-Khayr (al-Furqan)	2014/01	Murder	VIDEO B
<i>Who is better than God in judgement?</i>	Various (al-Baraka/ Halab) (al-Furqan)	2014/04	Drinking alcohol, sorcery	VIDEO C
<i>Implementing the hadd on corrupters on earth</i>	Halab (MO ⁴⁹)	2015/02	Robbery	VIDEO D
<i>Implementing the hadd for theft</i>	Dijlah (MO)	2015/03	Theft	VIDEO E
<i>Implementing the hadd on two drinkers</i>	Al-Jazira (MO)	2015/04	Drinking alcohol	VIDEO F
<i>Severing corruption with the judgement of the worshipper's Lord 1</i>	Ninawa (MO)	2015/04	Robbery/Murder	VIDEO G
<i>Severing corruption with the judgement of the worshipper's Lord 2</i>	Ninawa (MO)	2015/05	Robbery/ Murder	VIDEO H
<i>Implementing the hadd for apostasy on an agent of the planes of the Crusader-Nusayri alliance</i>	Hama (MO)	2015/06	Espionage	VIDEO I
<i>In retaliation there is life for you, oh people of intellect</i>	Al-Jazira (MO)	2015/06	Murder	VIDEO J
<i>Implementing the-hadd for robbery on corrupters on earth</i>	Homs (MO)	2015/06	Robbery	VIDEO K
<i>Implementing the-hadd for robbery on a man who killed his paternal aunt</i>	Al-Baraka (MO)	2015/06	Robbery/Murder	VIDEO L
<i>Judgement of the creator on a thief</i>	Ninawa (MO)	2015/06	Theft	VIDEO M
<i>Retaliation is life</i>	Ninawa (MO)	2015/07	Murder	VIDEO N
<i>Carrying out God's judgement on corrupters on earth</i>	Al-Furat (MO)	2015/08	Espionage	VIDEO O
<i>Implementing the-hadd on corrupters on earth</i>	Hama (MO)	2015/08	Homosexual fornication	VIDEO P
<i>Who is better in judgement than God 1. Implementing the-hadd on someone who did the deed of Lot's people</i>	Homs (MO)	2015/08	Homosexual fornication	VIDEO Q
<i>Who is better in judgement than God 2. Implementing the-hadd on a sorcerer</i>	Homs (MO)	2015/09	Sorcery	VIDEO R
<i>The flock's retribution against the apostates</i>	Ninawa (MO)	2016/05	Espionage	VIDEO S
<i>Those ruling by God's law</i>	Al-Khayr (MO)	2016/07	Fornication, Robbery, Theft	VIDEO T
<i>The power of shari'a</i>	Al-Jazira (MO)	2016/11	Homosexual fornication/ Fornication	VIDEO U
<i>Do they desire the rule of ignorance?</i>	Al-Furat (MO)	2018/04	Fornication/ Theft	VIDEO V

In total, 22 videos form the corpus of this study. They were released between 2013 and 2018. The bulk of the corpus – 15 videos – were released during a time period of slightly more than six months, likely showing a concerted media campaign to stress the Islamic State’s commitment to corporal punishments as proof for having established its *shari’a* state.⁵⁰ Three videos precede the caliphate announcement, another three videos are from 2016, and the final video from 2018 was released less than a year from the end of the territorial caliphate. Geographically, the videos originate evenly from Iraq and Syria, some key provinces – like al-Raqqa in Syria or al-Falluja in Iraq – surprisingly do not appear.⁵¹ The offenses and punishments shown in the videos roughly correspond to the two written sources. Sorcery – that does not appear on either leaflet or poster – appears prominently. False accusation of fornication as well as insulting God, Muhammad or the religion of Islam do not feature at all. It is unclear why Islamic State did not include them, as corresponding punishments did occur as Revkin has shown.⁵² Remarkably, none of the shown offenders is female. This is likely due to two reasons. Firstly, Islamic State is evidently not keen to include speaking women in its videos.⁵³ In principle, the group does not consider the voice of a woman part of her intimacy reserved for relatives, but practically calls for restraint on part of women when speaking with members of the other sex.⁵⁴ Secondly, implementing harsh corporal punishments on women is a public relation liability as other Jihadist groups have previously experienced.⁵⁵ This does not mean that such videos did not exist. A video showing the stoning of a woman in Syria’s Hama province leaked in 2014. It carries the logo of Liwa al-Mujahidin al-I’lami – previously the official media group of Katibat al-Muhajirin – that had defected to Islamic State.⁵⁶ This aspect of post-production points to intent of publication. Islamic State likely prevented an official or semi-official release of the footage but was unable to stop the video from leaking.⁵⁷

In the following, videos will be analysed regarding forms of punishment, responsible organs within the group, and establishment of guilt. The corpus shows a clear offense-penalty relationship. Offenses will be discussed in order of Revkin’s observation that identifies three kinds of offenses treated differently by Islamic State.

50 On coordinated video campaigns cf. Gambhir, Harleen: *The Virtual Caliphate. ISIS’s Information Warfare*, Institute for the Study of War, 2016, pp. 22-24.

51 The author did not count videos from the cross-border province al-Furat that encompassed parts of Iraq and Syria around al-Qaim border crossing for either Syria or Iraq. Cf. Lister, Charles: *The Syrian Jihad. Al-Qaeda, the Islamic State and the Evolution of an Insurgency*, New York 2015, p. 254.

52 Revkin, Legal Foundations, 18f.

53 Winter, Charlie: *Islamic State Propaganda*, in: Ashraph, Sareta, Carmen Cheung Ka-Man, and Joana Cook, ed(s). *Holding ISIL Accountable: Prosecuting Crimes in Iraq and Syria*, The Hague 2024, pp. 105-132, 108f.

54 Al-Bayan Radio, Fatwa 795.

55 A leaked video that showed Pakistani Taliban flogging a girl in the Swat Valley led to wide outrage in 2009. Cf. Constable, Pamela: *Taliban-Style Justice Stirs Growing Anger*, *Washington Post*, 10 May 2009. Arguably, the ensuing public pressure was one of the reasons for the Pakistani Army’s Rah-e-Rast Operation in Swat.

56 On the group that eventually joined Jabhat al-Nusra without the media team cf. al-Tamimi: Aymenn Jawad: *Muhajireen Battalions in Syria (Part Two)*, in: *Syria Comment*, 25 April 2014.

57 Al Arabiya News: *Video shows ISIS stoning woman in front of her father*, 21 October 2014.

Offense and Punishment

First, the Islamic State punishes behavior that is perceived as threatening the state. This category includes espionage, treason, collaboration with enemies, corruption or embezzlement of public funds, and spreading disorder (hirābah). Many of these offenses are construed as acts of apostasy and are therefore punishable by death. Second, the Islamic State punishes crimes against religion or public morality. These include adultery, homosexuality, blasphemy, apostasy, pornography, witchcraft, and selling or consuming drugs, alcohol, or cigarettes. Third, the Islamic State punishes crimes or torts against particular individuals or society as a whole. These include theft, burglary, rape, highway robbery, battery, and murder.⁵⁸

STATE THREATENING BEHAVIOUR

- Those accused of spying are shot as apostates (videos A, I, O, S). Video S is notable in so far, as members of the general populace are asked to come forward and shoot the alleged spies in revenge. All alleged spies are clad in orange clothes.
- As for state-threatening robbery, videos D and G, show executions and subsequent crucifixions. Video D shows men accused of kidnapping for ransom; G shows members of the group accused of “stealing the wealth of the Muslims in the name of the Islamic State”. As neither D nor G mention murder, it is clear that Islamic State applied the discretion of the judge as described on the poster, not the fixed rules stipulated on the leaflet in these cases. The factor that led the group to display the crucified bodies publicly is in all likelihood their status as members of armed factions operating within Islamic State territory and thereby directly threatening Islamic State’s monopoly of violence, i.e. state-threatening behaviour as per Revkin.

OFFENCES AGAINST RELIGION OR PUBLIC MORALITY

- Fornication is covered in videos T, U, and V. *Muhsan* men are stoned to death in T and V, non-*muhsan* men receive 100 lashes in T and U.
- Homosexual fornication features in in three videos. In videos Q and U, the alleged offenders are thrown from high buildings. Video P is an outlier, as the shown men are accused of “combining the sin of Lot’s people and corruption on earth”. They are killed by bullet-shot. Considering the case a form of robbery is far removed from Islamic State’s officially published legal discourse and rather a form of *siyasa* akin to the recommendations on crucifixion by the Office for Research and Studies. Spreading corruption on earth apparently means some form of spreading male homosexual material (possibly pornography) outside the confines of the private.
- Sorcery is punished by decapitation in both specimen, videos C and R.
- Drinking presumably leads to 40 lashes in video C, while video F postulates 80 lashes. This divergence echoes the difference between the two written sources, the poster only allowing for 80 lashes, if 40 are a form of *ta’zir* by the judge. Considering that video C shows scenes from al-Baraka province, where the Shafi’i school is particularly strong, the punishment might be understood as consideration for local expectations.

⁵⁸ Revkin, *Legal Foundations*, p. 18. Revkin includes offenses against morality in this category that do in general not lead to major corporal punishments but rather to *ta’zir* punishments. These are pornography, selling drugs, alcohol, or cigarettes, and consuming the latter. Theoretically, Islamic State could include the spreading of pornography as well as the selling of drugs and alcohol under the category of spreading corruption on earth in its wide interpretation.

OFFENSES AGAINST INDIVIDUALS

- The hands of alleged thieves are amputated in videos E, M, T and V.
- The remaining cases of robbery are penalised according to gravity of the crime. Video L shows an accused alleged to have killed his paternal aunt to gain her money. His punishment according to the verdict is beheading and crucifixion but only the former is visible on video. The combination of killing and robbery would warrant this penalty as per the leaflet. Videos H and T show beheadings for robbery. The case in video H is very similar to L with both alleged culprits beheaded. The lacking crucifixions are explicable by the judge's discretion. Videos K and T show amputations of the right hand and the left foot.
- The punishment for murder is the topic of videos B, J, and N. The alleged perpetrators are executed by bullet shot after the victims' families reject compensation and forgiveness.

The judicial process

The videos do not routinely mention a responsible institution for the judicial process. The earliest specimen dating from before the caliphate mention a general *shar'i* official of the province (Video A) and the province itself (Video B). Later specimens mention the Islamic court belonging to the respective Islamic State province (Videos G, H, I, J, M, N, U). Video L refers to the Ministry of Judiciary and Grievances (*diwan al-qadha wa-l-mazalim*) – an institution that was revealed as central Islamic State institution that provincial courts reported to in 2016.⁵⁹ Other late specimens (P and R) – possibly even the latest mentioning institutions if the outlier video U released in 2018 shows scenes recorded much earlier – generally speak of the Islamic court. It is unclear whether this is just a shorthand for provincial courts or denotes a further step towards bureaucratization, possibly a central court belonging to the Ministry of Judiciary and Grievances. Increasing bureaucratization is obvious in the progress from individual officials and provinces, to specialized provincial courts, and finally a central institution of the Islamic State.⁶⁰

This central institution was theoretically in charge of all Islamic State courts. As early as January 2016, the Ministry of Judiciary and Grievances was unhappy with the flow of information from the provinces and asked for detailed reports.⁶¹ One of the ideas behind the Ministry's plan was "connecting all the Islamic courts with each other through a central structure represented by the Ministry [...] through a united system of work [...] and obtaining information [...] through the work of document archiving to record the data of the different cases."⁶² In the position paper quoted immediately beforehand, the authors reveal the (envisioned?) structure of its court system. Under the Head of the Court, there were four departments: the General Court, the Administrative Court, the Military Court, and the Grievances Court. Within the General Court, there were further sub-divisions, namely the *Hudud* and Punishments Court, the Financial Court, and the Family Court. Further institutions within the judicial bureaucracy who likely cooperated with the *Hudud* and Punishments Court were the Office of Prosecution responsible for building a case, the Office of Investigation

⁵⁹ Al-Furqan Media: Structure of the Caliphate, July 2016.

⁶⁰ On the ministry, cf. Syria Justice and Accountability Center: Judge, Jury and Executioner. The ISIS Bureau of Justice and Grievances, 2022.

⁶¹ Circular no. 39 from the Islamic State's Diwan al-Qada wa al-Madhalim, in: al-Tamimi, Aymenn Jawad: The Islamic State Archives.

⁶² Islamic State Study and Position Paper on Internal Structure and Functioning of the Judiciary, in: al-Tamimi, Aymenn Jawad: The Islamic State Archives. The translation quoted above is by al-Tamimi.

that examined the case, and the Office of Judicial Police. The latter was responsible for implementing orders of the courts and the Office of Prosecution as to summoning alleged offenders and witnesses, overseeing imprisoned suspects, guarding the court, and implementing verdicts.⁶³

Based on this source, it seems likely that the Judicial Police was the executing party in major corporal punishments. Previous research finds that execution of major corporal punishment fell to the local police stations.⁶⁴ Distinction between these different police forces is difficult, as the General Police answered to both the local provincial governor and the chief justice of the province.⁶⁵ It seems most likely that individual police officers belonging to one or multiple stations were assigned to serve the court as is described by De Graaf and Yayla with regard to guarding duties for the chief judge and the courthouse – parts of the duty of the Judicial Police as detailed above.⁶⁶ Apart from the possibility of arresting suspects caught in the act of a *hadd* offense, the Islamic State's *Hisba* was presumably not directly involved in major corporal punishments cases. Administratively, the *Hisba* was a ministry in its own right and therefore not subordinated to the Ministry of Judiciary and Grievances.⁶⁷ It is important to stress that the *Hudud* and Punishments Court was just one of many courts within Islamic State's judiciary. Accordingly, having been a judge (with the exception of the delegated judge of the *Hudud* and Punishments Court), a prosecutor, an investigator, or a member of the Judicial Police within the Ministry of Judiciary and Grievances does not prove involvement in corporal punishment cases by default. This is especially true for police officers as the relationship between the Judicial Police and the General Police remains murky. Unsurprisingly, the enormous paper trail generated by the Ministry of Judiciary and Grievances – parts of which were amongst other documents found in Mosul – does not focus on major corporal punishments. To quantify the marginal role of such cases in that corpus, the files of the 'Abdullah b. 'Abbas Police Station in Ninawa Province are instructive. Between summer 2015 and spring 2016, 89 individuals were detained at the police station, only five cases are linked to *hudud* offenses, namely 001638 to 001640 (mocking prayer – presumably a form of apostasy), 001828 (suspicion of fornication), and 001850 (a knotted hair in the detainee's wallet – obviously suspicion of sorcery). Most detainees were arrested for possession or smoking of cigarettes.⁶⁸

Most of the corpus consists of mundane witness statements that cover ownership issues, only one of them clearly linked to theft.⁶⁹ Surprisingly, witness statements do not appear in the video corpus at all. The standard procedure for Islamic State as shown in the videos is establishing the guilt of suspects through their confession. Sixteen individual instances show, mention, or imply confessions as a reason for the implementation of corporal punishments. Islamic State also claims that necessary conditions for the implementation of corporal punishments are fulfilled. By case of example, in video A the group member starts the verdict

⁶³ Ibid.

⁶⁴ De Graaf, Beatrice and Yayla, Ahmet S.: *Policing as Rebel Governance*, in: *George Washington University Program on Extremism: The ISIS Files*, 2021, p. 30.

⁶⁵ Ibid, pp. 20, 23f.

⁶⁶ Ibid. p. 33.

⁶⁷ al-Furqan, Structure.

⁶⁸ *Prisoner Handover Documents (25_001347)*, in: *George Washington University Program on Extremism: The ISIS Files*.

⁶⁹ The case deals with a stolen car that might have led to a trial for theft if the offender had been caught. A verdict for theft would have been unlikely though as the doubt of shared ownership is apparent in the claimant's statement. *Claimant (Plaintiff) Interrogation Record (33_001521)*, in: *George Washington University Program on Extremism: The ISIS Files*.

with “based on his confession made while he was in full command of his mental capabilities”. In a similar vein, video E has a group member stating that the “conditions have been met” and the official in video L affirms, that the accused “confessed after an examination without any compelling”. Especially the latter aspect is doubtful. While some of the confessions seem to be the result of genuine remorse and the wish to erase a sin, it is likely that Islamic State worked with forced confessions. There are reports of Islamic State torturing prisoners it suspected of being offenders in *hadd* cases in order to extract confessions. An internal treatise by the group’s Office for Research and Studies allows light beating of Muslim suspects of ill repute and additional forms of torture like withholding water for specific amounts of time for non-Muslim prisoners.⁷⁰ Amnesty International has previously gathered information on the use of torture on the part of Islamic State.⁷¹

Propagandistic presentation of corporal punishments to the local and global audiences

The implementation of corporal punishments does not only form part of the Islamic State’s identity, but is additionally a form of propaganda. The following analyses the interaction of Islamic State with local and global audiences with a focus on the use of violence and the identity of victims. The local audience that consists of members of Islamic State and the public under the group’s control is a direct witness to the violence of corporal punishments and its ritualistic execution. With 21 out of 22 videos showing public executions, the planned inclusion of the population is evident. The outlier – Video A – dates from before the group could exercise reasonable territorial control, which is a necessary prerequisite for public executions. The involvement of the public is not always confined to seeing violence, sometimes the witnessing population is called forth to take active part in executions. Examples of such behaviour are found in video S, and possibly in videos Q, T, and U. Apart from deterring people from acting against the legal rules of Islamic State and re-enforcing the group’s image as upholders of *shari’a*, the participation of civilians in the execution of spies and male homosexuals, transforms bystanders to accomplices.

The global audience that consumes Islamic State videos is the other target of the group’s propaganda. As Winter has previously found, Islamic State propaganda serves three main objectives propagation, legitimization, and intimidation.⁷² Showing itself as a *shari’a* state serves as both propagation to other Islamists and legitimization within and without. Corporal punishments in general are a form of intimidation. Islamic State clearly decides whether, how, and in which circumstances it wants to exhibit corporal punishments to its audience. Firstly, the group takes care to differentiate regarding which punishments it shows in detail. Apart from the early video A, all other videos on executions of alleged spies present the violence in gory detail. The same is true for videos on executions of alleged murderers in B, J, and N, as well as the case of state threatening robbery in D and the robbery (corruption)/homosexuality case in video P. All mentioned videos show executions by bullet-shot. The more archaic corporal punishments of beheading, stoning, defenestration, and amputation are not detailed but fade to black before impact. The only other corporal punishments shown in full

70 Islamic State – Office for Research and Studies: Revision of the Rules on Torture, 2014/5, pp. 29f, 45f.

71 Amnesty International: Rule of Fear. ISIS Abuses in Detention in Northern Syria, 2013.

72 Winter, Propaganda, p. 109.

are lashings in videos C, F, T, and U. It seems that Islamic State tries to lessen the shock value of more archaic practices when being within a judicial context. This is noteworthy, as Islamic State does usually not shy away from showing ultra-violence in the form of slaughtering people with knives. Considering that official propaganda videos were shown to the inhabitants of Islamic State territory at so-called media-points, the especially gory nature of videos on alleged spies was likely intended to act as deterrent, thereby fulfilling the objective of intimidation.⁷³ Even more interesting is the aspect of alleged offenders' identification on video. There seem to be three distinct categories of identification:

- full identification by mentioning the alleged culprit's name and showing his face
- partial identification by mentioning his name while hiding the face
- no identification

Only seven specimen show full identification: videos A, I, O, and S dealing with espionage, videos D and G that show cases of state-threatening robbery as well as video R that shows an alleged sorcerer. It is arguable that the alleged sorcerer whose face is visible in video C conceptually belongs to the same category even though he remains unnamed as his case forms just a segment of a larger video. Additionally, there are no further videos showing the accused's face. Partial identification is found in videos H and L, which show cases of aggravated robbery that include murder and robbery. All other specimens forgo identification of suspects, with some going to great lengths to protect the identity of alleged offenders. In video T, the cardboards that carry the names of the punished men are made illegible through blurring. In videos M and N, spoken names of alleged culprits are beeped out.

Considering that both espionage and the forms of robbery shown in videos D and G belong to the category of state-threatening behaviour in Revkin's categorization, the latter evidently grasps real concepts that Islamic State itself defines similarly. Based on the observation of full identification, it is likely that Islamic State classifies sorcery as another form of that category. This understanding makes sense, as adherents of the group believe in and fear sorcery. There are multiple references to healing sorcery through Quranic faith healing in Islamic State documents.⁷⁴ This author has seen video material showing such exorcisms performed by group members. The notion that Islamic State perceives sorcery as a very serious threat is bolstered by a detail provided in video R. The video claims, that the "External Security Service" of the "Security Office of Homs Province" apprehended the alleged sorcerer before conquering the town of al-Qariyatayn. Should this claim be true, Islamic State forces snuck into the town held by the Assad regime in a presumably dangerous security operation just in order to abduct an alleged sorcerer. Following the argumentation above, Islamic State only fully identifies persons alleged to have committed a state-threatening crime in videos on corporal punishments, while protecting the identity of most other alleged offenders, at least on video. The aggravated robbery shown in videos H and L seems to be a special case. Here, partial identification occurs. The circumstances in both cases point to a legal specificity as they conform to the definition of heinous murder (*qatl ghila*) – "killing a person for his money after having him treacherously brought to an isolated place" that is specific to the Maliki school. It is probable, that this example once again displays the link between legal thought and propagandistic practice.⁷⁵

73 Winter, Charlie: ISIS' offline propaganda strategy, in: Brookings, 2016.

74 Cf. Referral of a woman for Ruqya Shari'ya, in: al-Tamimi, Aymenn Jawad: The Islamic State Archives.

75 Peters, Crime and Punishment, p. 44.

At least in cases of state-threatening offenses, identification might form an additional layer of deterrence through shaming relatives and friends. Full identification could also serve further Islamic State investigation by spreading information to potential informers within the local population. Such persons could come forward to identify contacts of alleged spies or sorcerers after recognizing acquaintances on video.

Conclusion

The findings of this paper underline the pre-eminent role of ideology in Islamic State's implementation of corporal punishments. Both leaflet and poster stress that ruling by all aspects of *shari'a* law is not an option but an absolute obligation to the group. Voluntarily abandoning the revealed corporal punishments therefore counts as disbelief in God. Islamic State's theoretical takes on corporal punishments generally built upon pre-modern Islamic legal thought but reveal a tendency for positions that ease implementation of said penalties and give additional leeway to the group's judges and leadership to decide punishments for the public interest – or what Islamic State perceives as such. An interesting result is the virtuosity that Islamic State uses in navigating different schools of law, possibly showing pragmatism regarding the population's preference and likely revealing the influence of foreign fighters from Northern Africa in the formulation of its own theory of corporal punishments. While some decisions in this legal pick-and-choose approach look utilitarian, one should be cautious to describe the group's legal approach in general as such. Especially the insistence to carry out major corporal punishments on its own members underlines the group's commitment to the implementation of *shari'a* on ideological, specifically religious grounds.

The practice shown in videos underlines all of these tendencies. Judgements in cases of state-threatening robbery exhibit the use of *siyasa* for the greater good. The special penal treatment in one case of heinous murder once more points to Maliki influence in the judiciary. Finally, the case of drinking in Syria's Hasaka reveals flexibility towards the Shafi'i positions held by large parts of the local public. Both legal theory and practice manifest the special danger that male homosexuals faced in the territorial caliphate. Practice shown in propaganda makes clear that people Islamic State considered sorcerers – apparently locals practicing faith healing as known from some Sufi traditions – were in similar jeopardy. The close link between theory, practice, and propaganda is especially notable in the visual treatment of punishments and – particularly striking – the identification of alleged offenders. The clear concordance between full identification of executed men and their alleged partaking in state-threatening behaviour provides researchers with a number of starting points to investigate individual fates of Islamic State's judiciary victims.

Prosecution of such crimes in individual cases will likely be complicated due to the remaining uncertainty of the inner workings of Islamic State's Ministry of Judiciary and Grievances and the division of tasks within Islamic State's police force, especially regarding executions. To reiterate, harsh punishments were evidently not a major aspect of Islamic State governance as “most cases were solved in a mild and preventative kind of manner”.⁷⁶



Membership in the Ministry of Judiciary and Grievances or the General Police alone is therefore insufficient evidence for convictions linked to major corporal punishments. Further research on the ministry is in order to solve such questions.

Another desideratum in this context is the analysis of implementation of major corporal punishments in the so-called distant provinces. Local Islamic State provinces have executed such punishments in Afghanistan, Egypt, Niger, Nigeria, and Libya after reaching the necessary threshold of territorial control. Differences in implementation between these provinces on the one hand and with the core provinces in Iraq and Syria on the other hand are an important field of study. Results might reveal either the guiding role of the Ministry of Judiciary and Grievances and to a lesser extent, the Office for Research and Studies or the importance of regional decision-making bodies fine-tuned to local circumstances and interpretations of Islamic law.



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