

Murder and Punishment in Pakistan

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Abstract:

No legal system in the world has aroused as much interest as Sharia. In 1990, Pakistan the world's second most populous Muslim-majority nation enacted an Islamic law of murder that effectively privatized punishment by giving the heirs of murder victims the right to retaliate against offenders (qisas) and by permitting killers to pay blood money (diyat) to those heirs as a means of settling their case and avoiding or reducing the criminal sanction. This article analyzes Tahir Wasti's recent monograph in order to describe how this Islamic criminal law was made and how it has been interpreted and applied, and in order to explore how and why "Sharia in practice" has delivered neither justice nor security in the Pakistan context. In the end, Pakistan's law of murder may be a case of what Murray Edelman called "words that succeed and policies that fail."

Keywords:

Homicide, Criminal Sanctions, Sharia (Islamic law), Qisas (equality, retaliation, retribution), Diyat (compensation, blood-money)

Tahir Wasti's *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice* (2009), is both a carefully researched book and a convincing commentary on the sorry state of crime and punishment in Pakistan. Wasti's core conclusion is that "the attempt to apply Sharia in the law of culpable homicide and murder in Pakistan has been completely unsuccessful" (p.288). This article summarizes the book's major findings and explores some of its implications for Pakistan and for comparative criminology. Section one presents evidence which suggests that Sharia in practice may be one reason behind Pakistan's high and rising rates of lethal violence. Section two describes how Sharia became law in Pakistan in 1990. Section three discusses how Sharia has been interpreted and applied by Pakistani officials and citizens. Section four suggests some of the law's most important impacts. And section five presents three lessons that should be learned from this case study.

Has Sharia Encouraged Murder?

Wasti is a former legal adviser to the Punjab provincial government, and he currently works as a Solicitor of the Supreme Court of England and Wales and a Senior Lecturer in Law at the Islamic College of Advanced Studies in London. His research shows that only 3 percent of murder cases end in criminal conviction in and around the central Pakistani city of Multan (a jurisdiction with a population of 11.5 million), while in Pakistan nationwide "an average of 83 percent of murderers escape punishment for their crimes" (Tavernise and Gillani, 2009; Wasti, 2009, p.285). In this country of 170 million, therefore, the chance of "getting away with

murder” is nearly 6 in 7 far higher than chances are in the United States (1 in 3), France (1 in 4), and Japan (1 in 25; see Johnson, 2008, p.153). In Pakistan, it seems, impunity is the usual consequence for committing murder. If the most powerful predictor of deterrence is the certainty of punishment (as many criminologists believe), then the routine impunity that accompanies killing in Pakistan is a major problem not only because it means offenders do not get their just deserts but also because it creates perverse incentives for murder and related crimes of violence (Kleiman, 2009, p.49; Kennedy, 2009).

Pakistan is hardly the only country in the world or in South Asia that has low conviction rates. Among other developing nations, India does too. In Mumbai India's most populous megalopolis the conviction rate for all criminal offenses in 2000 was only 4 percent, far below the already low conviction rates of 18 to 25 percent that the city had experienced in previous years (Mehta, 2004, p.175). And in India nationwide, “not even 45 percent of people charged with serious IPC [Indian Penal Code] offenses, including mob violence, are ultimately convicted. In other countries like the United Kingdom, France, and the United States of America and Japan, the conviction rate for similar offenses is over 90 percent” (Nariman, 2006, p.85).¹

Yet two murder facts do seem to distinguish Pakistan from many other countries, including its giant sibling to the east. The first is Pakistan's *extremely high rates of murder*, the most serious criminal offense. In 2000 the endpoint of Wasti's study and one year before the events of 9/11 led to explosions of violence in Pakistan and many other places the country's murder rate of 32 per 100,000 population was about 50 times higher than Japan's murder rate of 0.6, 18 times higher than China's rate of 1.8, 9 times higher than India's rate of 3.6, 5 times higher than America's rate of 6.0, 4 times higher than Thailand's rate of 7.5, and more than double the Philippines' rate of 14.2 (Wasti, 2009, p.376; Johnson and Zimring, 2009, p.433; Johnson, 2006, p.77). At the turn of the new millennium, the only countries that had higher murder rates than Pakistan were Colombia and South Africa (Johnson, 2006, p.77).

The second Pakistan distinctive is the *significant decline in the conviction rate for murder* that has occurred since the introduction of Islamic criminal law (sharia) in 1990 effectively privatized the punishment for murder by giving heirs of murder victims the right to retaliate against offenders (qisas) and by permitting killers to pay blood money (diyat) to those heirs as a means of settling the case and avoiding a criminal sanction. The new law also allows girls to be given away as part of any

“compensation package” (Wasti, 2009, p.19). According to Wasti, “the implementation of the law of qisas and diyat changed the whole structure of criminal litigation with regard to the offense of murder, as it altered the role of the state in the prosecution of criminal cases” (Wasti, 2009, p.14). In effect, the state's interest in responding to homicide was ceded to private parties, and conviction rates fell at every level of the criminal justice system: trial courts, High Courts, and the Supreme Court (Wasti, 2009, p.280).

One of Wasti's core claims is that Pakistan's murder rate has risen largely *because* Islamic criminal law has reduced the capacity of the criminal law to deter homicide. As he sees it, “The [blood money] provision has shaken the whole criminal justice system. It has encouraged all the criminals of Pakistan. They have used this loophole to kill whoever they want” (quoted in Tavernise and Gillani, 2009). Wasti presents a wide variety of homicide evidence obtained from the Interior Ministry and collected himself to show a marked increase in homicide in the decade after passage of the 1990 law compared with the decade before it (Wasti, 2009, pp.248-276, 376-377).²

The question of how to deter violence in Pakistan is certainly a pressing issue. As one veteran observer of South Asia has noted, “violence is to the North-West Frontier what religion is to the Vatican” (Dalrymple, 1998, p.319). And the problem is broader than just one province. Indeed, with its nuclear weapons, Taliban- and al-Qaeda-infested borderlands, dysfunctional cities, terrorist attacks (including direct assaults on army and police stations), feuding ethnic groups, and high murder rates, Pakistan “may well be the world's most dangerous country” (Kagan, 2009, p.70). For this reason and because of its strategic location and significance it may also be the most important country to the future of the world (Johnson, 2009; Cohen, 2006).

Pakistan officials have long lamented the problems in their criminal justice system. In 1982, the Joint Secretary of the Law Division of Pakistan's Ministry of Law and Parliamentary Affairs identified a number of “specific areas” which demanded “immediate attention” if the goal of fair, swift, and effective administration of criminal justice was to be achieved, and he pointed to “a want of necessary education” and “the absence of honest minds on the part of those who administer the system” as “the most glaring causes” of the problems that then afflicted the system (Chaudhry, 1982, pp.215-217). Today, nearly three decades later, Pakistan's criminal justice system is even more dysfunctional, and the law of homicide can be considered Exhibit A of the system's failings.

Wasti's detailed account of the application of an Islamic criminal law of murder its legal and theoretical foundations, its conception and development, its

interpretation and application by the judiciary, and its impacts is important not only for what it says about murder and punishment in Pakistan but also for what it implies about the role of Sharia in modern Muslim societies and for what it suggests about the conditions that encourage or inhibit effective punishment policy-making in countries of all kinds.

Making Sharia

Wasti explains in great detail the process that led to the birth of Islamic criminal law in Pakistan. Chapter 1 describes the sources and theories of Islamic law, reviews the relevant scholarly literatures, and explains his research methods, which included an impact study of the 1990 law, interviews with 60 legal professionals and politicians (p.399), a survey of some 700 attorneys in 10 different districts (p.279), and “wide-ranging field research in Pakistan during 2002-03” (p.52).

Chapter 2 examines the legal and theoretical foundations of the qisas and diyat law by focusing on three judgments made by the country's Sharia courts in the 1980s, all of which pointed in the same direction: that the punishments prescribed for offenses against the human body in chapter XVI of Pakistan's Penal Code were “un-Islamic” in that they did not allow for the use of qisas and diyat (p.57). Following Martin Lau (1992), Wasti argues that the Islamization of Pakistan has been primarily a judge-led process. In the end, courts “set a course for the government to embark on, laying down Islamic law on the basis of political expediency, selective material, and superficial approaches, when what was required most was deeper study, and analytical approach, organized research and contemporary thinking” (p.97).

In chapter 3, Wasti broadens focus to show that the judicial, executive, and legislative branches of government had very different views of the propriety of introducing Islamic criminal law in Pakistan (p.99). The story begins in the late 1970s with Zia-ul-Haq's “continuous process of Islamization to legitimize his long despotic rule” (p.101). In 1979, Zia promulgated a set of Islamic penal laws and established Shariat benches in the superior judiciary, but offenses affecting life and the human body were omitted from this project because he feared that qisas and diyat would allow his political rival, former Prime Minister Zulfikar Ali Bhutto, to obtain an acquittal in his murder case (p.101). Since Zia knew that qisas and diyat would create a legal obligation and public demand to try Bhutto under Islamic criminal law, he “shrewdly chose the date” of establishing “Islamic Order” in order to foreclose the possibility of his rival's survival. More bluntly, Zia wanted Bhutto dead, and since qisas and diyat could have helped save him, the dictator refused to push for those provisions (p.141). After Bhutto was hanged on April 4, 1979, it would take 11 years more for qisas and diyat to become law.

Chapter 4 reviews the legislative debates that occurred in the period between Bhutto's execution and the passage of the new law. It argues that "the Members of the Assemblies who were in favor of the introduction of qisas and diyat law were driven more by their zeal for Islam than by reason, rationality, or viability of the law" (p.144). Most strikingly, the Federal Council (Shoora) that was created in 1981 pending the restoration of democracy and its representative institutions repeatedly engaged in debates and deliberations that "were dominated by the virtues of Islam and Islamic law" (p.148), an approach to lawmaking that made "a mockery" of rational policy-making and "cheated the credulous and uneducated population" (p.145). In the end, the introduction of a qisas and diyat law in September 1990 "was a political move by President Ishaq Khan aimed at pleasing the Supreme Court of Pakistan" (p.166). Khan needed the top court's support because he had recently dismissed Prime Minister Benazir Bhutto's government and dissolved the National and Provincial Assemblies, actions which "were under scrutiny before the courts" (p.166).⁴

Interpreting and Applying Sharia

Chapter 5 examines how Islamic criminal law has been interpreted and applied by Pakistan's judiciary. It stresses two major themes. First, different judges have issued contradictory interpretations of the Islamic law of murder. According to Wasti, the disagreements occur because "the new law is replete with all the lacunae that are bound to occur in the case of any hasty, politically-motivated and precipitate legislation" (p.235). Penal laws that should clearly define murder offenses, punishments, evidentiary requirements, and defenses available to the accused do none of these things. The predictable result is that judges fill in the legal holes with their own preferences and predilections.⁵ According to Wasti, the legal flaws, frictions, and uncertainties of the law of qisas and diyat have resulted not only in the misuse of the law by killers who aim to escape punishment but also by judges who are little bound by its "vague concepts and loose and imprecise definitions" (p.236).

The second theme of chapter 5 is that the law of qisas and diyat has often been misappropriated by influential sectors of society who use it and their own wealth, muscle, and connections to pressure poor persons and families into making "compromises" that pardon their own murderous acts. In this way, the Islamic principle holding that the murder of an innocent person is the gravest sin of all and deserving of everlasting punishment in hell (p.88) has been systematically twisted to favor the interests of the "haves" over the "have-nots" (p.281).

Wasti does not provide many thick descriptions of murder cases to illustrate how qisas and diyat work in actual practice, but those he does summarize suggest an

extremely unseemly picture. In one case that was reported by the Pakistani press in 2002 (*Sadar Khan etc. v. The State*), four men were sentenced to death for a double murder, but they were pardoned shortly before their execution when their relatives agreed to pay the victims' family 12 million rupees (\$144,000) and 8 girls as compensation. Ultimately, after “the intervention of various influential parties and a human rights group, only two girls (aged 14 and 15) were given to the aggrieved family”; they were then wedded to men aged 55 and 77 (p.281).

Another troubling example was recently described by *The New York Times*. Malik Ishaq, one of the founders of the militant sectarian group Lashkar-e-Jhangvi, possesses a police record with a tally of at least 70 murders but he has never had a conviction stick. Ishaq has been in jail since 1997 with 44 cases against him, but convicting him has proved all but impossible because victims, their families, and judges have routinely been intimidated. Soon after Ishaq's first trial started in 1997, witnesses began to die, and the body count has continued to rise ever since. A man named Fida Hussein Ghalvi testified against Ishaq in 1997; since then, 12 members of his family have been killed, and the Ghalvis still refuse to compromise with Ishaq. “I sometimes feel like a prisoner, and the killers are at large,” Ghalvi says from his home in Multan, where all his servants have quit and an armed guard is posted at the gate. “Where is the justice?” (quoted in Tavernise and Gillani, 2009).

Other examples suggest that it is Pakistani women who “suffer most under the provisions of [Islamic criminal] law” (Wasti, 2009, p.210). The Research Wing of the Women's Division of the Secretariat of the Government of Pakistan raised several objections during the period when the new law was being drafted: that testimony should be admissible from Muslim female witnesses, not just from Muslim males; that the value of diyat for male and female victims should be the same; and that (per Article 25 of the 1973 Constitution) all citizens should be “equal before law” and “entitled to equal protection of law” (pp.126-128). But following severe criticisms from the Ministry of Religion and Minority Affairs and other conservative interests, the women's views were marginalized and ignored (p.129).

Sharia's Impacts: Less Punishment, More Murder?

In an article published several years ago, a Deputy Inspector General of Police for the Mardan Region in the North-West Frontier Province of Pakistan noted that the Quran establishes a central principle of Islamic law: the “equality of men and the necessity of awarding proportionate punishment to all offenders, without distinction, unless and until the offender is pardoned by the relatives of the victim under circumstances that are expected to lead to improvement of conditions” (Khan, 2004, p.136). The same official went on to assert that the Islamic law of qisas and diyat

“provides a very effective and practical means to put a stop to murder and safeguard human life. A man who shows a callous disregard for the life of a fellow-person loses his right to live. The option to pardon allowed to the heirs of the slain person *should not be regarded as likely to encourage murder*, for such option is not synonymous with exemption from punishment as in ordinary circumstances the murderer will have to pay the blood-money. Moreover, the would-be murderer possesses no means to know that the heirs of the person whose murder he contemplated will actually be persuaded to pardon him; so the fear of capital punishment will always be there to deter him from the commission of the crime. Again, pardon or remission is permissible only where the circumstances are such that the pardon or remission is likely to improve conditions and *bring about good results for all parties concerned*” (Khan, 2004, p.136; emphases added).

The most important contribution of Wasti's book is its refusal to settle for theoretical and normative bromides of this kind and its insistence that the Islamic law of murder be studied “in action” to determine how it works in actual practice. His core conclusion is that the law has failed badly, in part because it is based on “primitive social norms” and “the tribal values of traditional society” (pp.285-286). For him, Pakistan's law of murder is not only incompatible with modern conceptions of “the criminal justice system of the state” (p.18), it also contradicts some of Islam's highest principles (p.287). According to Wasti, the only real solution is to “delegislate” the present law and “relegislate” a law of culpable homicide and murder that takes into account modern theories of crime and punishment in addition to the indigenous norms of society (p.288). At the same time, Wasti acknowledges and laments that “introducing any law in the name of Islam” makes it “exceedingly difficult” to change it (p.288).

The most profound impact of Pakistan's new law is how it has reconceived the crime of murder as an offense against the family of the deceased instead of as an offense against the legal order of the state. This approach to criminal homicide was prevalent on the Indian subcontinent under Muslim rule before and during the British occupation, and the private character of qisas and diyat was one reason the British abolished it (p.239). In its place, the British introduced a system of criminal justice based on Anglo-Saxon jurisprudence. When Pakistan grafted Islamic criminal law onto that system in 1990, it effectively privatized punishment for homicide and thereby stimulated so many problems that Wasti concludes: “The attempt to apply Sharia in the law of culpable homicide and murder in Pakistan has been completely unsuccessful” (p.288).

As described in the opening paragraphs of this article, Wasti also argues that the new law has diminished the deterrent effect of punishment for murder, and he

attributes the recent rise in Pakistan's homicide rate to the unwelcome effects of that legal change. Though he might be right, it does need to be noted that his causal story overlooks and ignores a wide array of explanatory variables that could help account for the homicide increase. The omitted variables include measures of: economic growth and inequality, illegal drug markets, ethnic conflict, family stability, the availability of guns, the efficiency of the police, media effects, and citizens' exposure to violent acts committed by the government (Beeghley, 2003). These are just some of the factors that are routinely used to explain homicide variation in other nations, and it is unfortunate that Wasti examines none of them in this book. The result is a simple thesis about cause-and-effect. Islamic criminal law led to more murder that may be part of the explanation but that seems too simplistic to be taken at face value.

Another big impact of Islamic criminal law in Pakistan is how it reflects and reinforces social and economic inequalities. As Wasti summarizes, "the law is being abused by people in positions of power and influence" (p.285). The most disconcerting aspect of this abuse is "the impact of the qisas and diyat law on murders within families, especially the honor killings of women" (p.285). More broadly, influential offenders are using diyat to get their cases compromised in the early stages of their cases without ever being convicted of murder. By contrast, if poor offenders are able to get their cases compromised at all, they typically do so in the late stages of the criminal process by "selling the last straw of their possessions and offering their females to the victims' family" (Wasti, 2009, p.287).

Sociologist Donald Black once observed that law has a "direction" in social space in that it can move from a higher rank toward a lower rank (downward) or from a lower rank to a higher one (upward). Black also noted that, all else constant, law of every kind is more likely to move downward than upward. As he famously put it: "Downward law is greater than upward law" (Black, 1976, p.21). From this Blackian perspective, the striking thing about Islamic criminal law in Pakistan is not merely the downward direction of diyat law, it is how easily, frequently, and powerfully that law can be mobilized by persons of power in a downward direction. For Wasti, the result is so much "uncalled-for leniency" that the law makes "a mockery of the Islamic concept of criminal homicide, according to which the killing of one person is equal to killing the whole race of human beings" (p.287).

Finally, the impact of blood money is also evident in capital punishment. Pakistan appears to be the only Muslim-majority nation in Asia with high rates of judicial execution, although those rates vary significantly from year to year (Johnson and Zimring, 2009, p.20). According to Amnesty International and the Human Rights Commission of Pakistan, the country carried out 18 executions in

2003, 21 in 2004, 52 in 2005, 83 in 2006, 134 in 2007, and 36 in 2008. Even in the highest execution years there is a huge disparity between the volume of executions and the size of Pakistan's death row. In 2007, for example, there were approximately 7400 prisoners on death row nearly 7000 of them in the province of Punjab. This means Pakistan had the largest death row population in the world, accounting for more than one-quarter of all the condemned inmates on the planet (FIDH and HRCP, 2007). Yet in the same year, when Pakistan executed more people than in any other year in its recent history, only 1.8 percent of its death row inmates were executed and diyat is one reason why.

In 2007, the blood money needed to avoid execution was often about US\$20,000 a sum eight times greater than the country's per capita GDP (\$2500). The class dimension of Pakistani capital punishment is most apparent when a wealthy person is indicted for killing a poor one, because "the abject conditions of the poor person's family make it all but impossible for them to refuse blood money." Once they accept it, "the crime itself is effectively eradicated" (Zakaria 2007). Conversely, few poor Pakistanis can afford to pay sufficient compensation to the families of victims with means. It is hardly surprising, therefore, that the vast majority of people on Pakistan's death row are destitute. Their only earthly salvation is the help of wealthier allies and advocates which sometimes comes from surprising quarters. Prison superintendents who oppose capital punishment have been known to spend considerable amounts of their own time and energy trying to raise diyat funds for the condemned (Johnson and Zimring, 2009, p.20).

Three Lessons

Are there any lessons to be learned from this case study of a legal failure? There seem to be at least three: on the importance of retributive principles of punishment, the sources of bad law, and the attractions and limits of Islamic criminal law in Pakistan and other parts of the Muslim world.

For starters, some readers of Wasti's book specially those in the West may be predisposed to dismiss Sharia as antiquated, outdated, and unsuited to conditions in modern societies. If so, I hope they will take the time to consider another possibility: that the Islamic criminal law of murder recognizes the value of certain aspects of punishment that have been unduly discounted in Western criminal justice systems.

In his brilliant book *Eye for an Eye*, Professor William Ian Miller of the University of Michigan Law School reminds us of several neglected truths: that *lex talionis* the retributive principle of "an eye for an eye and a tooth for a tooth" was often taken literally in a wide range of human societies; that it still plays a powerful but submerged role in Western thinking about revenge and justice today; and that this principle was not nearly as brutal or unfair in practice as other, putatively more

civilized ways of dealing with the desire for revenge (Miller, 2006). Miller also shows how limply inadequate are “modern liberal and utilitarian understandings of justice that try so aggressively to purge this elemental instinct [of revenge] from [Western] law and laws” (Miller, 2006). In his “anti-theory of justice,” *lex talionis* facilitates rather than inhibits what are often seen as the more “civilized” processes of negotiation and compensation, because that tit-for-tat principle means the victim (not the offender or the state) decides how much the offender must pay for committing a murder or putting out an eye. Miller masterfully shows that in many retributive societies, eyes, teeth, and lives have great value. Conversely, he suggests that it may be Western cultures not the revenge cultures they look down on as barbaric that tend to view life as cheap.

If Miller is right, then maybe the core principles of Islamic criminal law *qisas* and *diyat* have something to teach non-Islamic societies and scholars about the nature of justice. Perhaps, as Miller insists, justice is largely about righting the balance, achieving reciprocity, and cultivating a willingness to bear the considerable costs of “getting even.” If it is, then despite all the problems of “Sharia in practice” that Wasti has documented in his fine book, “Sharia in law” may function as a useful mirror for many Westerners by reflecting principles of justice that have been unduly neglected in the United States and Europe and by prompting deliberation in those who take the trouble to look at an Islamic legal system that takes retribution seriously.

But at the same time, since “Sharia in practice” is indeed ineffective, it is instructive to consider the reasons for its failure. A comparative perspective may help. For the last four decades the United States the world's most punitive country in many respects has been a hothouse of harsh, inefficient, and ineffective criminal laws (Kleiman, 2009; Packer, 1968). The most notorious example may be the “Three Strikes and You're Out” law that California passed in 1994.⁶ This law was both typical of American “get tough” legislation and unique: *typical* in that it uses mandatory prison sentences and targets repeat offenders, and *unique* in that is much broader and tougher than the Three Strikes laws that have been passed in other American jurisdictions. Among other things, the California law defines an extremely broad “strike zone,” it is used to send offenders “out” (to prison) for exceptionally long periods of time, and it targets many offenders who only have two strikes, not three. This law has been called “the largest penal experiment in American history” and it must be considered a failure. Most notably, Three Strikes in California has had little impact on crime while generating huge disparities in how similar cases are treated and helping to fill the state's prisons to overflowing through its draconian sentencing provisions (Zimring, Hawkins, and Kamin, 2001, p.17; Jaffe, 2009a, 2009b, 2009c).⁷

How did a democratic jurisdiction like California create a law that is every bit as bad as Pakistan's law of murder? The answer is complicated, but at its core are facts that also shed light on why the Islamic law of murder is failing in Pakistan. Most notably, legal and academic experts were almost completely sidelined during the lawmaking process in California, and citizens' deep mistrust of government provided the impetus for lawmakers to take away much of the discretion that professional judges in California used to possess over how and how severely to punish criminal offenders. In Wasti's study of Pakistan, both of these factors the absence of expertise in the lawmaking process, and the presence of government mistrust help explain the advent of an Islamic criminal law of murder whose provisions are satisfying to some on a symbolic level but whose actual operations leave a great deal to be desired. The implications for better criminal justice policy are clear: expertise must be valued, not marginalized by populist or political pressures; and legal decision-makers must be insulated against the fear and fury that so many citizens feel in societies as disparate as Pakistan and the United States.

Finally, public opinion about Islamic law is deeply conflicted, not only inside Pakistan but in the rest of the world (Ayoob, 2007). Most strikingly, the reputation of Sharia has undergone an extraordinary revival in many Muslim-majority nations in recent years, whereas to many people in the West the word 'Sharia' conjures "horrors of hands cut off, adulterers stoned, and women oppressed" (Feldman, 2008a; Feldman, 2008b; Caldwell, 2009). Outside the Muslim world it is probably true that "no legal system has ever had worse press" (Feldman, 2008).⁸

One major virtue of Wasti's book is that it demonstrates how an Islamic criminal law of murder can remain theoretically, theologically, and politically attractive while at the same time failing to do the basic things that criminal law is supposed to do in modern nation-states: control crime, and deliver "just deserts." Thus, Wasti's story about the application of Islamic criminal law in Pakistan may actually be one instance of the widespread phenomenon in modern law and politics that the scholar Murray Edelman called "words that succeed and policies that fail" (Edelman, 1977). The Islamic meanings and values reflected in Pakistan's new criminal law of murder are succeeding at certain religious and rhetorical levels, but the more important truth may be that the country's criminal justice policies are failing in spectacular fashion.

In order to deter murder and administer justice better than is now being done under the system of qisas and diyat, Pakistan's government probably needs to change the law (Wasti, 2009, p.288). I am no expert, but I am not sanguine about the

Prospects for positive change, in part because people do not necessarily want tangible “things” from government, they want *the feeling* that they are getting things which is quite another matter.

Many Pakistani citizens and officials apparently believe in the righteousness of Islamic criminal law, regardless of its practical effects. This is one large obstacle to reform. But an even more formidable obstacle may be the fact that the Islamic law of murder serves the interests of powerful persons who are both practiced and proficient at using criminal violence to achieve their own ends. In the absence of functional democratic institutions, it is hard to see how those interests can be overcome.

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Endnotes:

¹Criminal sanctions are also highly uncertain in parts of Latin America. According to Guillermo Zepeda, a scholar at the Center for Investigation and Development in Mexico City, "someone committing a crime in Mexico has only a two in 100 chance of getting caught and punished... The big reason is that just 12 percent of crimes are reported to the police" (Luhnow, 2009). But once a suspect is arrested in Mexico, a conviction is likely to occur (Luhnow, 2009). And in Rio de Janeiro, a Brazilian city with 14 million inhabitants, 90 percent of murders remain unsolved (Anderson, 2009, p.51).

²Unfortunately, several inconsistencies in Wasti's presentation of Pakistan murder statistics make his argument about the impacts of Islamic criminal law less persuasive than it otherwise might have been. For example, the average murder rates reported in Table G.2 on page 376 are almost double the rates reported in Table G.1 on the same page. Similarly, the homicide rates for the "sample area" of Multan in Graph 6.1 (p.259) are only about one-fourth as high as the rates reported for Pakistan in Tables G.1 and G.2 (p.376). The latter disparity may merely or mainly reflect the great socio-economic and cultural diversity that exists within Pakistan's borders (Schmidle 2009; Tavernise, 2009a). If so, it would have been instructive for Wasti to say so. But the first disparity is more difficult to understand (and Wasti did not answer my email inquiry about it). Wasti does describe some of the perils of relying on Pakistan's official crime statistics (pp.251, 261). Some of his book's statistical incongruities undoubtedly reflect the difficulty of obtaining decent crime data in this developing nation.

³Lau (2005) also argues that judges in Pakistan led the process of Islamization in an

Effort to enhance judicial independence and power and expand the scope of legally guaranteed rights.

⁴After 1990, the government re-issued the qisas and diyat law some 20 times before Parliament finally approved it in 1997. In Pakistan, an ordinance issued by the President lapses after four months if has not been approved by the legislative branch (Wasti, 2009, p.166).

⁵The judicial penchant for finding holes in statutes reminds one of the story about the man who ate a pair of shoes. When he was asked how he liked them, he said the part he liked best was the holes! See the opinion of Justice Keen in Lon Fuller's classic "The Case of the Speluncean Explorers" (*Harvard Law Review*, 1949; available at <http://www.nullapoena.de/stud/explorers.html>).

⁶The name of this law comes from the sport of baseball, where batters are declared "out" if they swing and miss three times.

⁷The sweeping nature of the California law has put thousands of nonviolent men and women in prison for 25 years to life, for crimes as minor as shoplifting \$2.69 worth of AA batteries, forging a check for \$94.94, or attempting to buy a macadamia nut disguised as a \$5 rock of cocaine. Some analysts believe that history will remember California's Three Strikes as "a discredited nightmare like McCarthyism, Japanese internment camps, and the Salem witch trials" (Domanick, 2005, quoting Robert Scheer on the back cover).

⁸In some respects this reputation is not deserved. See, for example, the works on torture and search and seizure by Sadiq Reza (2007 and 2009), and Noah Feldman's studies on the role of Sharia in "the fall and rise of the Islamic state" (2008a and 2008b).

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