



The Islamic Penalty for Adultery (Zinā) in the Second Century AH (718–816 CE) and the Legal Status of the Unborn

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The COBHUNI project studies the history of the unborn in three stages: before the unborn, the unborn, and after the unborn is born. Islamic legal discourse on extramarital pregnancy in the second century AH (718–816 CE) exhibited concern with each of the three stages. When pregnancy resulted from the capital offense of adultery (zinā), involving muḥṣan partners, that is, free Muslims who prior to the act of zinā had consummated a legal marriage, such offenders incurred the stoning penalty (rajm). The traditionists and jurists who dealt with cases of adultery concerned themselves with the unborn’s welfare both before and after birth. Although conceived in illegal circumstances, the zinā unborn was not considered to incur legal liability because of his/her parents’ misdeed. Accordingly, the mother’s stoning was deferred until after the child had been born, breast-fed, and weaned, and care had been taken to entrust the orphan to a foster family.

The presentation opens with an introduction about dating and reconstructing Muslim traditions with reference to their lines of transmission (isnāds) and substantive content (matns) and follows the development of the second-century doctrine about the punishment for adultery in cases of pregnancy.

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