Submission 3110

Title: "The Ethics of Penal Amputation"

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| **No.** | **Reviewers’ comments** | **Authors’ responses** |
| 1 | The topic is relevant and discussed from a Malay perspective. However, more information is needed on the Malaysian context to have clear understanding of some of the points made. Please provide such relevant information | A paragraph has been added ( page 1) to clarify the position in Malaysia |
| 2 | • The use of Rawls’ concept of “decent society” could be more directly connected to the situation of the context you are addressing. In particular, more specific attention to Malaysia, versus describing Islamic societies in general, would be helpful. Does this concept have particular relevance to the Malaysian situation?  • Please clarify why the use of placebo controls is a suitable comparison for your case | A paragraph has been added to show why the author considers Malaysia to be a “decent” society ( pg 5)  In Page 7 a clarification has been added together with a reference. |
| 3 | Some generalizations about liberal societies and their practices need further elaboration, in order to make clearer and more compelling comparisons:  • The comparison of penal limb amputation to euthanasia makes euthanasia seem like a simple matter of consent, but it is much more complicated. This should either be more fully explained, or the comparison should be left out. The parallels to organ donation are more clearly relevant, though they could be elaborated.  • Similarly, capital punishment is far from uncontroversial in the USA, and so if it is to be a comparison, much more of the complexity must be discussed, and supporting literature must be cited. There are many ethical arguments as to why physicians should not participate, and that would also have relevance to this topic    •The proposed relevance of the Tuskegee incident in the USA is not explained (and it is misspelled). | This has been elaborated in page 6. The parallels with organ donation has been elaborated  I would like to respectfully point out that I have used this as an analogy not in order to analyze the ethical arguments for or against the participation of doctors in capital punishment. I only which to highlight that in many cases, governments have not found it difficult to recruit physicians to participate. As Alper’s paper (3) demonstrates, while there are non binding ethical objections to participation in the US, it is not difficult to find physicians who are willing to flout these guidelines which do not convince them. They are also not subjected to penalties. Thus, it is possible for surgeons to find personal arguments which may allow them to participate in penal amputations. What I want to examine is whether this is ethical at least from my point of view as a practicing surgeon.  I would like to apologise for the typo. I have added a brief explanation ( pg6) |
| 4 | The overview of the Hudud laws provides useful context, though if this is an interpretation from a particular interpretive subgroup, which should be mentioned. If there are relevant disagreements as to the interpretation, it may also be useful to describe what they are and their source(s). Is this a particularly Malay interpretation? If not, please explain why that is not the focus. | It has been explained that this explanation is from the Sunni Islamic perspective which is the recognized interpretation of Islam in Malaysia ( pg 3 ) |
| 5 | The conclusions are clear overall, but you should discuss them more specifically within the context of Malaysia, since the article starts with an extensive discussion of Malaysia | A Paragraph has been added to explain this ( Pg 8) |
| 6 | The paper should go through revision to ensure that the English language is used properly:  • There are many instances where colloquial phrases are used in odd and unnecessary ways.  • The use of the dichotomy “decent societies” versus “liberal societies” in the abstract without immediately specifying that it refers to Rawls’ concept could imply an unintended value judgement. I would suggest being clearer in the abstract that this term is being used as a philosophical term, which differs from ordinary English usage.  • There are a number of misspellings and grammatical errors. | I apologise for this and have made corrections. I hope that this will answer the objections.  • I have made it clear that we are talking about Rawl’s criteria when referring to decent societies and have always refereed to “ decent” within inverted commas to ensure that this does not occur. I have modified the abstract as well  I apologise for this. I have run a vigorous software check and I hope the manuscript will now be deemed acceptable |

Editor’s review

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| 1 | 1. The Malaysian context: The subject matter of the submission arises from the proposal of Kelantan, one of the provinces of Malaysia to transit to implementation of Hudud punishments. The author recognizes that within the larger liberal democratic political union of Malaysia this may never happen. At the same time, the author seems to respond to the debate, and tries to argue that irrespective of whether such transition is desirable, such transition in itself may not be ethically so problematic. However, from thereon, the author abandons Malaysia and the province of Kelantan, and tries to build arguments on the hypothetical decent societies. The point is, the specific proposals of Kelantan and political system of Malaysia are not hypothetical, and hence they need to be referred to and show how they are connected to the theoretical arguments made. | I have addressed this point while replying to the Reviewer No 1. I would also like to point out that I am talking about “decent” societies because I consider Malaysia to be a “decent” society as defined by Rawls.  I have tried to examine the ethical arguments as related to Malaysia specifically in this context. I hope this answers the objection.  I have, however modified my manuscript to show that I am mainly referring to Malaysia and most of the arguments would apply to Malaysia in general and Kelantan in particular. I agree that I feel that the implementation of Hudud laws are unlikely to occur; however it is possible and thus this discussion is relevant an important. |
| 2 | . Hudud punishments: Reference 4 (by Souryal) and 5 (Fadl) are heavily used to explain ethics of Hudud punishments. Of the two, the interpretation of Fadl’s position is problematic for the arguments made. While saying that “Quran and law of god are binding”, he proposes that “the dynamism and vitality of Islamic law must be preserved in the contemporary age, and that such a result is not possible without maintaining the liberty and innovative capacities of the individual”. He argues that “the ḥudūd punishments themselves do not embody an ethical or moral value. The value is in the unethical and immoral behavior that the ḥudūd are intended to deter. Therefore, for instance, it is the ban against the consumption of alcohol that is immutable and eternal and a part of the Shariʿah, and not the punitive measure prescribed in the text for the commission of such an offense”. Thus, by implication, there is nothing immutable in the punishment and they may not be followed. He calls such an understanding a “radical paradigm shift” from the traditional Islamic or Muslim understanding of the hudud. and therefore his paper is not useful to explain the hudud punishment per se as ethical. The author needs to interpret the key messages of the papers carefully | I would like to respectfully submit that I have used the papers of Souryal and Fadl, not to examine the ethics of Hudud punishments but to explain what hudud punishments are and what the crimes that merit such punishments in Islamic law. I have added this discussion as I realized that even many practicing Muslims are not clear about hudud laws and their application.  Thus I feel that Fadl’s *interpretation* is not relevant in this instance as I have only used his paper as a fairly authentic source to clarify what hudud punishments are. |
| 3 | Character of such societies: The author has used Rawls’ conceptual framework to argue that a non-liberal society could also be decent and thus deserve toleration and not sanction. The author needs to explain in some detail why the societies currently practising or implementing Hudud laws (Iran, Saudi Arabia etc; and so probably, Kelantan) are indeed decent and that they satisfy criteria laid down by Rawls for a decent society (see section 8.2 of Rawls’ book “The Law of Peoples”). In particular, you need to engage with the criteria of human rights (slave society is not decent – so was liberal democracy of USA with slavery really liberal or decent?), uniform laws for all persons and idea of discrimination (South African apartheid and present day Israel thus may not qualify as decent), and the process of law guided by justice (present day implementation standards of hudud in Iran, Saudi Arabia, Sudan etc may not qualify as decent).  The author should explicitly state that Rawls did not talk only about liberal and decent societies, but also societies which were outlaw states, societies burdened with unfavourable conditions and societies with benevolent absolutisms. The tolerance for decent ones is also a strategy to prevent them to regress to more negative features. The author should recognize that the Kelantan proposal to transit from “liberal” to “decent” society is also a regressive move from Rawls’ perspective. Rawls’ emphasis on social contract and procedural justice must be kept in mind while applying his theory to this subject matter | I would like to respectfully point out that I am looking specifically to the context of Malaysia. This is why I have not analysed the practices in other Islamic countries which are, in Rawl’s criteria not  “ decent”.  I have added an explanation on Page 5 to add this explanation. I thank the editor for pointing this out |
| 4 | The reviewer has provided comments on stylistic issues – they must be complied with. Besides, the references are loosely marked in the text. For instance, at some places instead of inserting reference to the exact sentence to which it belongs, it is placed at the end of the para giving an impression that even the author’s argument contained in the para is also reflected in the reference. This must be strictly avoided.  The subject matter covered in the paper is politically sensitive, more so in the times of identity politics and stereotyping (particularly of Islam and Muslims). Therefore, the author should take due care and be very specific in making arguments. Very broad assertions to support or oppose a proposal would not be useful. | I have complied with these as detailed in the reply to Reviewer No 1.  I have also made the necessary correction to the reference style as recommended.  I have been very respectful of Islamic sentiments and have tried to be very specific in my arguments. I think that I have been very sympathetic to the views of Islamic scholars. In view of this comment, I have again scrutinized the manuscript and I do not think that it would hurt anybody’s religious sentiments. |