Proceeding of International Conference on Sharia and Law (ICOSLAW) 2026
Navigating Women's Roles in Legal Development
Vol. 3, No. 01 (2026)

Deconstruction of Afghan Women's Rights Post 2021 through Jasser Auda's Maqasid Shariah and Feminist Legal Theory

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Abstract:
Restrictions on Afghan women since August 2021 have been justified through claims of protection, prevention of fitnah, and the dignity commanded by divine law. This study deconstructs those claims using Jacques Derrida's framework, combined with two analytical instruments: maqāṣid al-sharī'ah in Jasser Auda's systems approach and Catharine MacKinnon's feminist legal theory. Rather than running the two critiques in parallel, the aim is to map their convergence and tension in reading the same object, while assessing each instrument's contribution and limitation. The method is normative-doctrinal legal analysis with qualitative content analysis of the regime's decrees, read alongside international documentation and empirical indicators. Three findings emerge. Derridean deconstruction shows the August 2021 legal order's founding authority rests on itself, collapsing the binary between divine source and custom. Maqāṣid al-sharī'ah reveals the policies injure the welfare they claim to protect. Feminist legal theory shows the doctrine reconstitutes women as permanent sexual objects—converging diagnostically yet diverging methodologically.

Keywords: Deconstruction; maqasid al-shariah; feminist legal theory; custom as supplement; Afghan women.

Introduction

On 15 August 2021 the Islamic Emirate of Afghanistan seized power. Since that moment dozens of decrees have appeared that progressively restrict women and remove them from public space. The United Nations recorded more than 70 decrees by August 2024, and that number rose to more than 80 the following year.[1] The series of policies unfolded in stages, beginning with the halt to secondary schooling for girls and the dissolution of the Ministry of Women's Affairs in September 2021. The restrictions continued with the requirement of a male companion for journeys of more than seventy-two kilometres in December 2021, the obligation to cover the face in several regions in May 2022, the ban on entering universities and on working for non-governmental organisations in December 2022, the closure of beauty salons in July 2023, codification in August 2024, and the ban on midwifery and nursing education in December 2024.

Within that series, the codification of August 2024 marks a shift of a different kind (from decree to state law). Its instrument regulates the covering of the body and the face, forbids women's voices from being heard in public space, and prohibits the carriage of female passengers without a companion. [2] What changed at that point was not only the scope of the restrictions but their form: from scattered decrees into codified state law. [3] The difference matters because decrees are more easily revoked whereas statutes are not. Changing them demands a legislative process.

These restrictions carry tangible consequences. More than one hundred thousand women lost access to higher education after

[1]UN Women, *UN Women Deeply Concerned by New Afghanistan Morality Law*, August 3, 2026, https://www.unwomen.org/en/news-stories/statement/2024/08/un-women-deeply-concerned-by-new-afghanistan-morality-law.
UN Women, "Statement on the Law on the Promotion of Virtue and the Prevention of Vice," 25 Agustus 2024. Angka lebih dari delapan puluh dekret dilaporkan UN Women pada 2025; Nazifa Haqpal menyebut lebih dari seratus.
[2] Islamic Emirate of Afghanistan, *Law on the Promotion of Virtue and the Prevention of Vice*, (Kabul), 2024, https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf.
[3] Nazifa Haqpal, "The Afghan Women's Movement and Gender Apartheid: Shifting the Trajectory of International Human Rights Law," *Central Asian Survey*, 11 Juli 2025, 1–19, https://doi.org/10.1080/02634937.2025.2514553.

December 2022, while some one point four million girls have been unable to attend secondary education. The economic loss is estimated at five hundred million dollars a year, or roughly two point five percent of gross domestic product. [4] In the fourth quarter of 2022, women's employment fell by twenty-five percent compared with the second quarter of 2021, while employment restrictions are projected to reduce national output by as much as five percent. [5]In the health sector, the ban on midwifery education was imposed when maternal mortality had already reached 638 per hundred thousand live births and was projected to rise by fifty percent to 963.[6] A survey in April 2024 recorded sixty-eight percent of women rating their mental health as poor or very poor.[7]

Those figures, however, are not the object of this study. The restrictions on women are not defended as a form of discrimination. They are defended as protection, as the prevention of *fitnah*, and as the elevation of dignity commanded by divine law. So long as that justification is accepted as true within the regime's internal logic, the figures above can be positioned as justifiable consequences for the sake of a higher welfare. The problem therefore lies not merely in the magnitude of the impact but in the structure of the claim that allows that impact to be justified. It is this structure of the claim that must first be dismantled.

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[4] UNESCO, *Protecting the Right to Education for All Afghans* (Paris: UNESCO, 2024), https://www.unesco.org/en/emergencies/education/afghanistan; UNICEF, "Depriving Girls of Secondary Education Translates to a Loss of at Least US$500 Million for the Afghan Economy," 2022, https://www.unicef.org/rosa/press-releases/depriving-girls-secondary-education-translates-loss-least-us500-million-afghan.

[5] International Labour Organization, *Employment in Afghanistan in 2022: A Rapid Impact Assessment* (Jenewa: ILO, 2023), https://www.ilo.org/resource/news/women-bear-brunt-afghanistan-job-losses; United Nations Development Programme, "Restrictions on Women's Employment Can Reduce Afghanistan's GDP by an Additional 5 Percent," 2021, https://www.undp.org/press-releases/restrictions-womens-employment-can-reduce-afghanistans-gdp-additional-5-percent-undp-report-finds.

[6] Alaha Nasari, Sammer Marzouk, dan Najibullah Safi, "A Health Emergency: Afghanistan's Nursing and Midwifery Ban," *The Lancet* 405, no. 10477 (Februari 2025): 463, https://doi.org/10.1016/S0140-6736(25)00130-8; "Potential Impact of Maternal and Newborn Health Improvements in Afghanistan: Projection of Mortality to 2030," *Maternal and Child Health Journal*, advance online publication, 2025, https://doi.org/10.1007/s10995-025-04108-4.

[7] UN Women, *Gender Alert: Afghan Women's Voices* (New York: UN Women, 2024), https://www.unwomen.org/en/digital-library/publications/2025/08/gender-alert-four-years-of-taliban-rule-afghan-women-resist-as-restrictions-tighten.

Three corpora address this problem, each hitting its own limit: international criminal law/human rights, whose gender apartheid concept gained judicial affirmation in the ICC's July 2025 arrest warrants (gender persecution as institutionalized suffering from discriminatory social norms) [8], is strong on precision of accountability but weak because its argument comes from outside the regime's own logic of self-justification—letting the regime deflect it either as the will of society or as a foreign standard—and it is this positional weakness that calls for critique from within the Islamic tradition itself, via maqāṣid al-sharī'ah. Islamic feminism, with its mature hermeneutic apparatus reading text and fiqh against patriarchal sediment, engages post-2021 Afghanistan mainly through Qur'anic interpretation rather than a theory of legal purpose that speaks directly to a regime claiming to govern by fiqh.[9] A more recent third corpus refutes both justifications at once while warning against treating the regime as a doctrinal monolith. [10] Even as maqāṣid itself is now under scrutiny, both decolonially (whether its structure truly derives from the Islamic tradition or borrows Western epistemology) and internally (a history of rulers using it to legitimize their own policies, plus the subjective character of maslahat itself). [11]

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[8] Trying individuals for genocide, war crimes, crimes against humanity, and aggression Situation in the Islamic Republic of Afghanistan, Fadi El Abdallah ___ (International Criminal Court 2025), https://www.icc-cpi.int/news/situation-afghanistan-icc-pre-trial-chamber-ii-issues-arrest-warrants-haibatullah-akhundzada; Akila Radhakrishnan dan Alyssa T. Yamamoto, "Why the Crimes Against Humanity Treaty Should Codify Gender Apartheid," Just Security, 2023, https://www.justsecurity.org/89193/why-the-crimes-against-humanity-treaty-should-codify-gender-apartheid/.

[9] *Trying individuals for genocide, war crimes, crimes against humanity, and aggression Situation in the Islamic Republic of Afghanistan*; Radhakrishnan dan Yamamoto, "Why the Crimes Against Humanity Treaty Should Codify Gender Apartheid."

[10] Nazifa Haqpal, "The Afghan Women's Movement and Gender Apartheid: Shifting the Trajectory of International Human Rights Law," *Central Asian Survey*, 11 Juli 2025, 1–19, https://doi.org/10.1080/02634937.2025.2514553; Ghassan Elkahlout dkk., "Madrassas and Girls' Education: Exploring Localised Educational Solutions in Post-2021 Afghanistan," *Compare: A Journal of Comparative and International Education*, 17 Maret 2026, 1–21, https://doi.org/10.1080/03057925.2026.2643263.

[11] Mohamed Mitiche, "A Decolonial Critique of the Maqāṣid-Based Approach to Sharīʿa: The Call for a Moratorium on the Ḥudūd," *Journal of Islamic Law* 6 (2025): 233, https://journalofislamiclaw.com/current/article/view/mitiche; Abdessamad Belhaj, "Abū Yaʿrub Al-Marzūqī and His Critique of the Maqāṣid Theory," *Religions* 14, no. 9 (September 2023): 1212, https://doi.org/10.3390/rel14091212; Necmeddin Güney,

Recent empirical literature makes clear that these restrictions work as an interlocking system rather than as a collection of free-standing rules, and that their effects compound into the next generation through the loss of women professionals.[12] Some studies also find room for accommodation at the local level, for instance through religious educational institutions, showing that resistance to women's education is not uniform across social strata or religious structures.[13] Both findings weaken the defence that the regime's policies mirror the will of Afghan society, and at the same time show that a reading of sharia which stops at the level of the text will lose sight of how these rules actually operate.

The urgency of this study rests on three grounds. First, restrictions on women have shifted from temporary decrees into state law, so that the exclusion of women is institutionalised and no longer merely a matter of policy. Second, when the regime rejects international human rights criticism as hostility towards religion, criticism from within Islamic legal reasoning becomes important for testing that claim. If the claim that these policies are sharia is left unchallenged from within, it risks settling into a reading of Islam regarded as valid, so that its consequences concern not only the rights of Afghan women but also the face of Islamic law. Third, international legal categories for addressing religiously grounded gender exclusion are being formulated, yet that process still involves little engagement with Islamic legal reasoning.

Post-2021 Afghanistan represents all three of these concerns concretely. Afghanistan therefore becomes a strong test case for the two analytical instruments used in this study, given that the

"Maqāṣid al-Sharīʿa in Islamic Finance: A Critical Analysis of Modern Discourses," *Religions* 15, no. 1 (2024): 114, https://doi.org/10.3390/rel15010114.

[12] Bibi Zainab Nasiri, "Education Policy as a Recursive System of Gendered Power: Evidence from Post-2021 Educational Restrictions in Afghanistan," *Journal of Educational Research and Practice* 4, no. 1 (April 2026): 128–43, https://doi.org/10.70376/jerp.v4i1.436.

[13] Ghassan Elkahlout dkk., "Madrassas and Girls' Education: Exploring Localised Educational Solutions in Post-2021 Afghanistan," *Compare: A Journal of Comparative and International Education*, 17 Maret 2026, 1–21, https://doi.org/10.1080/03057925.2026.2643263.

regime formally institutionalises gender exclusion while claiming the authority of sharia. A deconstructive reading of Islamic reasoning is also not simply an approach from outside the tradition, since a similar approach has been developed by Maghribi Muslim thinkers to criticise the unthought within the tradition of religious reasoning and has been applied in readings of al-Ghazali's thought.[14]

Developments at the level of international accountability reinforce that urgency. In addition to the arrest warrants issued in July 2025, a number of states announced in September 2024 steps towards accountability under the convention on the elimination of discrimination against women. As of mid-2026 those steps remain at the stage of negotiation and arbitration and have not yet become a case registered before the International Court of Justice.[15] At the same time, a proposal to codify gender apartheid into the draft convention on crimes against humanity is under discussion. All three avenues will confront a legal order that justifies itself in the language of religion, and to the extent that their formulation proceeds without any encounter with Islamic legal reasoning, they risk producing a framing of opposition between the West and Islam that works to the regime's advantage.

From that mapping, this study is directed at answering two questions: first, how do maqāṣid al-sharī'ah and feminist legal theory work as instruments of deconstruction of the post-2021 Afghan regime's policies? Second, where lie the convergence, the divergence, and the theoretical consequences of the two upon the same policy object?

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[14] Mohammed Arkoun, *The Unthought in Contemporary Islamic Thought* (London: Saqi Books [u.a.], 2002); Ebrahim Moosa, *Ghazālī and the Poetics of Imagination*, Islamic Civilization and Muslim Networks (Chapel Hill, NC: University of North Carolina Press, 2005).

[15] Expert Working Group on the Potential Case(s) for Afghanistan at the International Court of Justice (ICJ), "Joint Civil Society Statement Marking the One Year Anniversary of the Announcement of a Legal Initiative to Hold Afghanistan Accountable Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," Human Rights Watch, 25 September 2025, https://www.hrw.org/news/2025/09/25/joint-civil-society-statement-marking-the-one-year-anniversary-of-the-announcement.

To answer them, this study is arranged in three levels that correspond to the research questions. The first level places deconstruction as the framework housing the study as a whole. The second level operates maqāṣid al-sharī'ah and feminist legal theory, each answering one side of the first question. The third level maps comparatively the results of the two, answering the second question.

The choice of deconstruction proceeds from the form of the claim being confronted. The regime's claim is not merely that its policies are good but that its policies are sharia. A claim of that kind places itself beyond debate, since to contest it is to contest the will of God. The objection that arises at once is that deconstruction demolishes every foundation, including the foundation for judging a policy wrong. Derrida himself answers it with the distinction on which this study rests, namely that law can be deconstructed whereas justice cannot.[16] Justice becomes the very condition of possibility for deconstruction rather than its victim.

The analysis then proceeds with Derrida. The moment of founding a new law always begins with a *coup de force*, a compulsion that is performative because it immediately creates a new legal reality with no support in any prior law. In itself, therefore, that law is neither valid nor invalid.[17] Its ground of authority is consequently mystical in the sense that it rests on nothing other than itself. Law is obeyed because it is law, not because it is just.[18]

A criticism that often arises is that deconstruction exposes all values and foundations and thus generates a contradiction for a study such as this. That contradiction is said to make it impossible to take a political position or to defend particular rights.[19] The answer is that deconstruction does not treat everything alike; it

[16] Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" dalam *Acts of Religion*, ed. oleh Gil Anidjar (New York: Routledge, 2002), 919-`1045, https://doi.org/10.4324/9780203724309.
[17] Ibid., 241–42.
[18] Ibid., 238–41.
[19] Jürgen Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures* (Cambridge, Mass.: Polity Press, 2007); Nancy Fraser, "The French Derrideans: Politicizing Deconstruction or Deconstructing the Political?," *New German Critique*, no. 33 (1984): 127–54, https://www.jstor.org/stable/488353.

deconstructs specifically those conceptions that are unequal, not those that are equal. It therefore carries a particular value from the outset, and stating that value openly is not an inconsistency but methodological honesty.[20] It should be added that deconstruction was not born in a space sterilised of the experience of colonisation, since Derrida wrote from his position as a colonised subject in Algeria who had lost his own language.[21]

The first analytical instrument is Jasser Auda's systems approach, which treats Islamic law as a system with six features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.[22] Of these six, this study selects three as working tools because each has direct testing power against the regime's legal claims. Cognitive nature (*al-ṭabī'ah al-idrākiyyah*) separates revelation from human understanding of it, so that the regime's rules are not absolute and remain open to testing. Openness demands attention to empirical data and reality. Purposefulness tests means against the ends to be achieved.[23] Auda also reformulates the five classical maqasid ammah, among other things interpreting *ḥifẓ al-'aql* as the development of scientific reasoning and adding one further maqasid, *ḥifẓ al-'irḍ*, understood as dignity and human rights.[24]

The second analytical instrument is Catharine MacKinnon's dominance approach, which proceeds from a critique of the claim

[20] J. M. Balkin, "Transcendental Deconstruction, Transcendent Justice," *Michigan Law Review* 92, no. 5 (1994): 1131–1186; J. M. Balkin, "Being Just with Deconstruction," *Social & Legal Studies* 3, no. 3 (1994): 393–404.

[21] Jacques Derrida, *Monolingualism of the Other; or, The Prosthesis of Origin* (Stanford: Stanford University Press, 1998), https://www.sup.org/books/theory-and-philosophy/monolingualism-other; Jane Hiddleston, "Derrida, Autobiography and Postcoloniality," *French Cultural Studies* 16, no. 3 (Oktober 2005): 291–304, https://doi.org/10.1177/0957155805057295.

[22] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), bab 6; Jasser Auda, "A Maqasidi Approach to Contemporary Application of the Shari'ah," *Intellectual Discourse* 19, no. 2 (2011): 193–217.

[23] Ǧāsir ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. oleh Ǧāsir ʿAuda (London: The International Inst. of Islamic Thought, 2008), bab 6; Jasser Auda, "A Maqasidi Approach to Contemporary Application of the Shari'ah," *Intellectual Discourse* 19, no. 2 (2011): 193–217, https://doi.org/10.31436/id.v19i2.231.

[24] ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, bab 1-7.

of neutrality. A view that professes to be universal and to stand outside any particular position in fact arises from a specific social position, that of the group holding power, so that no rule is wholly neutral.[25] Second, MacKinnon shifts the focus from the question of difference to the question of hierarchy: not merely whether a norm differentiates between or equalises men and women, but whether that norm places one group in a dominant position over another. MacKinnon applies this line of questioning to religiously based family law. She argues that rules exempted from equality review because they are regarded as personal in fact enact the sexual politics of the relation between women and men and institutionalise dominance through law.[26] This logic of exemption is also relevant to the Taliban regime's policies more broadly, since those policies too are shielded from criticism by the frames of "religion" and "honour", even though their scope is not confined to family law alone.

Feminist legal theory is chosen not because Islamic feminism is weaker but because the two work on different sides of a line. *Maqāṣid* and Islamic feminism both proceed from within the Islamic tradition, whereas feminist legal theory provides an analytical position from outside the tradition for testing how law forms and sustains relations of power and gender subordination.[27] Pairing *maqāṣid* with Islamic feminism would yield two internal critiques working in the same field, leaving insufficient analytical distance for mapping points of tension. Besides resting on religious

[25] Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, 9. printing (Cambridge, Mass.: Harvard Univ. Press, 1994); Catharine A. MacKinnon, *Toward a Feminist Theory of the State*, 1. paperback ed., 5. [print.] (Cambridge, Mass.: Harvard Univ. Pr, 1991).

[26] Catharine A. MacKinnon, "Sex Equality under the Constitution of India: Problems, Prospects, and 'Personal Laws,'" *International Journal of Constitutional Law* 4, no. 2 (April 2006): 181–202, https://doi.org/10.1093/icon/mol001.

[27] Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam*, Reprinted, A Oneworld Paperback Original (Oxford: Oneworld, 2018); Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretation of the Qur'an* (Austin (Tex.): University of Texas press, 2006); Margot Badran, "Between Secular and Islamic Feminism/s: Reflections on the Middle East and Beyond," *Journal of Middle East Women's Studies* 1, no. 1 (2005): 6–28, https://muse.jhu.edu/; Sa'diyya Shaikh, "Ibn ʿArabī and Mystical Disruptions of Gender: Theoretical Explorations in Islamic Feminism," *Signs: Journal of Women in Culture and Society* 47, no. 2 (Januari 2022): 475–97, https://doi.org/10.1086/716648.

interpretation, the regime's defence also invokes claims of protection, honour, and social order to regulate the position of women. A hermeneutic approach therefore risks being trapped in a debate about which interpretation is valid, while the regime can maintain its own interpretation through a fiqh methodology it claims to be sound. MacKinnon's criterion of hierarchy avoids that problem by testing not which interpretation is valid but the relations of power and the position of women that the rules produce.

This approach further reaches the problem hardest for the first instrument to grasp, namely who has the authority to declare what counts as women's interests. For MacKinnon, the measure of validity is not normative reasoning but women's lived experience as a legitimate source of knowledge.[28] That shift appears small yet has large consequences. Within a framework of purposes, women's welfare is determined deductively by jurists who are entirely male, and women appear as those whose interests are formulated; within the dominance approach, women appear as those who do the formulating. This is the principal reason why the study requires a second instrument. *Maqāṣid* succeeds in separating revelation from human cognition, but it does not ask who, socially and politically, holds the authority to define welfare itself.

The tension between the first and second levels is plain. On one side, MacKinnon firmly rejects the postmodernist view, holding that its relativism weakens the position and the struggle of women. On the other, feminists who adopt Derrida's thought criticise MacKinnon in return. They regard her dominance approach as too essentialist, levelling the whole of women's experience as though it were single and uniform, which is of course not the case for Afghan women.[29]

[28] MacKinnon, *Toward a Feminist Theory of the State*.
[29] Catharine A. MacKinnon, "Points Against Postmodernism," *Chicago-Kent Law Review* 75, no. 3 (2000): 687–712, https://scholarship.kentlaw.iit.edu/cklawreview/vol75/iss3/; Drucilla Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law*, Thinking Gender (New York, N.Y.: Routledge, 1991).

No literature reconciles the two smoothly. That tension is managed in two steps. First, Derridean deconstruction is understood not as a neutral or value-free method but as grounded from the outset in a commitment to equality. Second, MacKinnon's dominance theory is deployed only as an instrument for measuring inequality, not as a rigid absolute truth.[30] This layered arrangement follows the distinction between meta-theory (the principal theory, Derrida) as a philosophical framework and middle-range theory as working apparatus (Maqasid and MacKinnon), so that the three levels occupy different logical strata and cannot be read as theoretical eclecticism.[31]

This study is normative-doctrinal legal research with qualitative content analysis. The primary legal materials are the regime's decrees and codified legal instruments, above all the August 2024 legislation. Secondary materials include the documentation of the United Nations Assistance Mission in Afghanistan, the reports of the Special Rapporteur, empirical data on education, health, and employment, and academic literature relevant to the two analytical instruments.

The deconstructive operation proceeds in four steps. *First*, identifying the binary oppositions in the regime's decrees and official discourse, such as protection–oppression and sharia–*'urf*. *Second*, showing the hierarchy between them: protection and sharia are placed as the correct position, while oppression and *'urf* are subordinated. *Third*, reversing the hierarchy by showing that the privileged term in fact depends on the subordinated one. The claim to protect women from sexual *fitnah*, for instance, is built by first placing women's bodies, faces, and voices as sources of desire, so that the protection claimed simultaneously produces

[30] Gayatri Chakravorty Spivak, "Feminism and Deconstruction, Again: Negotiating with Unacknowledged Masculinism," dalam *Between Feminism and Psychoanalysis*, ed. oleh Teresa Brennan (London: Routledge, 1989), 206–23, https://doi.org/10.4324/9780203011126.

[31] Gerrit van der Waldt, "Constructing Theoretical Frameworks in Social Science Research," *The Journal for Transdisciplinary Research in Southern Africa* 16, no. 1 (2020): a1468, https://doi.org/10.4102/td.v16i1.1468; Robert K. Merton, *Social Theory and Social Structure* (New York: Free Press, 1968), https://archive.org/details/socialtheorysoci0000mert_w8x3.

oppression. *Fourth*, displacing the opposition by showing that the two poles cannot be absolutely separated. Deconstruction thus reveals the way the regime builds its legal justification through oppositions that place one side as correct and the other as subordinate.[32] The fourth step must be strictly maintained, for without it deconstruction becomes merely a reversal of hierarchy. The two oppositions analysed are protection–oppression and sharia–*'urf*. The sharia–*Urf* pair in particular is read through the logic of the supplement, that is, when something that appears as an addition or a secondary element turns out to be the part that supports and constitutes what is regarded as primary.[33]

In the policies examined here, what the regime calls protection turns out to be realisable only through means that are in fact forms of oppression. This does not mean that protection must in general be realised through oppression, but rather that oppression is the only means the regime has chosen for realising that protection. The same pattern appears in the regime's claim that its rules derive purely from sharia. On closer examination, the sharia claimed as a pure foundation depends on 'urf, local custom, to fill the parts not regulated in detail by the texts. Certain rules, such as the extremely strict form of purdah, turn out to originate in Pashtun custom rather than in revealed text or classical fiqh. The claim that the rules are purely sharia therefore cannot stand on its own, since that sharia acquires its concrete content precisely with the help of 'urf.

The author's position is stated openly. This study does not treat the rights of Afghan women as a political justification for

[32] J. M. Balkin, "Deconstructive Practice and Legal Theory," *Yale Law Journal* 96, no. 4 (1987): 743–86, https://jackbalkin.yale.edu/sites/default/files/files/deconstructivepractice.pdf; Pierre Schlag, "A Brief Survey of Deconstruction," *Cardozo Law Review* 27 (2005): 741–52, https://scholar.law.colorado.edu/; J. M. Balkin dan John M. Ellis, "Nested Oppositions," *The Yale Law Journal* 99, no. 7 (Mei 1990): 1669–705, https://doi.org/10.2307/796657; Clare Dalton, "An Essay in the Deconstruction of Contract Doctrine," *The Yale Law Journal* 94, no. 5 (April 1985): 997–1114, https://doi.org/10.2307/796151.

[33] Jacques Derrida, *Of Grammatology* (Baltimore: Johns Hopkins University Press, 1997), bab "the dangerous suplement," https://press.jhu.edu/books/title/11199/grammatology.

military intervention, nor does it reproduce an image of Afghan women merely as weak victims. The analysis is directed towards the thought, the voices, and the articulations of Afghan women themselves, including testimony and documentation of their experience. The limit of this study lies in its use of that documentation as analytical material; it is not intended to assess the validity of theological teachings but to examine how legal reasoning is used to justify and apply rules concerning women.[34]

The analysis follows a fixed order. The regime's official texts are read first in order to identify recurring pairs of oppositions, that is, the pattern in which one term is always placed as the correct one and its counterpart as a rejected accusation. From that reading, two pairs most decisive for the structure of justification are selected, namely protection against oppression and sharia against custom. Both pairs are then tested with the two analytical instruments in sequence rather than simultaneously, so that the work of each can be distinguished and compared at the final stage. The results of that testing are read back against empirical indicators to ensure that the conclusions do not rest on normative reasoning alone. The comparative mapping in the final section is arranged by seeking, first, statements produced identically by both instruments, second, statements that contradict each other, and third, statements that only one of them can produce.

Dicussion

Constructing Authority and Legal Legitimacy of the Taliban after the Seizure of Power

[34] Ratna Kapur, "Un-Veiling Women's Rights in the 'War on Terrorism,'" *Duke Journal of Gender Law & Policy* 9 (2002): 211, https://scholarship.law.duke.edu/djglp/; Ann Russo, "The Feminist Majority Foundation's Campaign to Stop Gender Apartheid: The Intersections of Feminism and Imperialism in the United States," *International Feminist Journal of Politics* 8, no. 4 (2006): 557–80, https://www.tandfonline.com/; Ratna Kaput, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, t.t., 1–37; Jacqui True dan Farkhondeh Akbari, "Geopolitical Narratives of Withdrawal and the Counter-Narrative of Women's Rights Activism in Afghanistan," *Global Studies Quarterly* 4, no. 3 (2024): ksae051, https://doi.org/10.1093/isagsq/ksae051.

Afghanistan was previously under the Government of the Islamic Republic of Afghanistan (*Islamic Republic of Afghanistan*). Its last leader immediately before the seizure was Ashraf Ghani. Power was then taken over by the Taliban in August 2021. This moment was not merely a political event but also an event of forming a new legal order. In Derrida's framework this stage can be understood as a *coup de force*, an act of power that at the same time constitutes a legal order that did not previously exist. Its founding moment therefore cannot be judged valid or invalid on the basis of existing law, since at that point a new legal order is precisely in the process of being formed.[35] It must be stressed that this argument does not apply specifically to the Taliban but can be applied to every formation of a new legal order, including in liberal-democratic states. The *coup de force* is thus understood as a general problem in every founding of law rather than as a distinctive trait of a particular regime.[36] The *coup de force* accordingly does not distinguish just from unjust law-making, and it is not used in this research to pass moral judgement.

Derrida's analysis dismantles the ground the regime uses to justify its legitimacy. When that legitimacy is claimed to derive from religious command, the claim is placed as a supreme foundation held to require no further justification, and thus difficult to question or to test.[37] The performative violence at the moment that order was founded is then disguised, so that an order born of human decision appears as a natural continuation of religious command rather than as the result of human choice and enactment.

At this stage, the instrument of *Maqāṣid al-Sharī'ah* in Jasser Auda's approach works by separating absolute revelation (*sharī'ah*) from historical human interpretation (*fiqh*).[38] This distinction does not aim to reject revelation but to affirm that the regime's

[35] Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" 241–42.
[36] Jacques Derrida, "Declarations of Independence," *New Political Science* 7, no. 1 (1986): 7–15, https://www.tandfonline.com/.
[37] Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" 238–41.
[38] ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, bab 6.

interpretation is not revelation itself. The claim to divine authority advanced by the regime thereby collapses, and the focus of debate shifts from the will of God to human reasoning. This framework demonstrates that the policies in force are the product of limited human thought and are therefore academically open to testing and criticism.[39]

The distinction Derrida borrows from Walter Benjamin, between law-founding violence and law-preserving violence, helps explain what happens after that founding moment.[40] This institution combines the two functions by applying existing rules while at the same time creating new norms arbitrarily in the field. The result is an overlap between *law making* and *law enforcement*. This uncertainty compels society, and women in particular, to submit to the subjective will of enforcement officers rather than to clear and settled rules of law. It demonstrates that what is taking place is not the enforcement of divine law but the dynamic creation of law in human hands.

A *Consequentialist Test Of Taliban Policy Through Maqāṣid Sharī'ah*

This principle tests the fit between means and ends on the basis of actual consequences. The regime's claim that its policies aim to protect women can be tested by examining the impact of those policies on the ends recognised by maqasid. Such a test requires no prior theological agreement; it is enough to look at the consequences produced.

The Taliban regime's departure from the principle of *Maqāṣid al-Sharī'ah* is plainly visible in the destructive impact it produces across many domains of life. In the aspect of *ḥifẓ al-'aql*, the removal of more than 100 thousand female students and 1.4 million schoolgirls from secondary education destroys intellectual capacity systemically; the absence of women teachers that occurs

[39] J. M. Balkin, "Transcendental Deconstruction, Transcendent Justice," *Michigan Law Review* 92, no. 5 (Maret 1994): 1131–86, https://doi.org/10.2307/1289630.
[40] Derrida, "Force of Law: The 'Mystical Foundation of Authority.'"

today automatically closes access to education for the next generation.[41] That damage extends to *ḥifẓ al-nafs*, where the ban on midwifery and nursing education amid a crisis of medical personnel, together with the *mahram* requirement, severs access to safe childbirth and drives a projected fifty percent rise in maternal mortality.[42] In the dimension of *ḥifẓ al-māl*, the twenty-five percent fall in women's labour participation and the projected loss of five percent of national GDP cripple both household and national economies.[43] Finally, in the aspect of *ḥifẓ al-'irḍ* (human dignity), these systematic restrictions erode the mental life of Afghan women, as confirmed by a survey of 2,112 women that identified the education ban and the regime's decrees as the most fundamental threat to their future.[44]

A policy that measurably destroys what it claims to be safeguarding cannot be called a policy of safeguarding. Its departure occurs even from the school of law the regime itself acknowledges. In classical Hanafi doctrine, women's testimony is accepted in all matters except serious criminal cases and blood retaliation, and because the capacity to be a witness is analogised with the capacity to be a judge, women may hold judicial office in cases where their testimony is accepted.[45] Classical fiqh also recognises women's full legal capacity in ownership, trade, and contract, while the requirement of a companion for travel differs

[41] UNESCO, *Protecting the Right to Education for All Afghans*; UNICEF, "Depriving Girls of Secondary Education Translates to a Loss of at Least US$500 Million for the Afghan Economy."
[42] UNESCO, *Protecting the Right to Education for All Afghans*; UNICEF, "Depriving Girls of Secondary Education Translates to a Loss of at Least US$500 Million for the Afghan Economy."
[43] International Labour Organization, *Employment in Afghanistan in 2022: A Rapid Impact Assessment*; United Nations Development Programme, "Restrictions on Women's Employment Can Reduce Afghanistan's GDP by an Additional 5 Percent."
[44] Nasari, Marzouk, dan Safi, "A Health Emergency"; International Confederation of Midwives, "Statement Condemning the Ban on Afghan Women Accessing Midwifery Education," 2024, https://internationalmidwives.org/icm-statement-condemning-the-ban-on-afghan-women-accessing-midwifery-education/.
[45] Mohammad Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought," *International Journal of Middle East Studies* 29, no. 2 (1997): 185–204, https://doi.org/10.1017/S0020743800064461.

among the schools both in distance and in legal character.[46] A blanket ban on women's education and employment has no support in that school. This finding matters not because classical fiqh is the final measure but because it closes off the easiest way out for the regime, that of saying it is merely following the school it adheres to.

One further purpose that requires testing is *ḥifẓ al-dīn*, which is in fact frequently made the ground of the regime's justification. If the safeguarding of religion is understood as an effort to preserve religion as a source of guidance that can be accepted and lived, these policies run counter to that purpose. When policies that demonstrably damage the intellect, life, property, and dignity of women are claimed to be sharia, what is at stake is not only the lives of Afghan women but also the credibility of Islamic law. Tested against the purposes recognised by its own tradition, therefore, these policies fail to achieve the ends they claim to be safeguarding. This conclusion is built from within the framework of Islamic law used by the regime, without depending on international human rights instruments.

Claims of Protection and Mechanisms of Gender Dominance in Taliban Policy

The second analytical instrument works on a layer the first does not reach. MacKinnon's dominance theory rejects the assumption that law is neutral. Liberal law conceals its position through a claim of neutrality, whereas the Afghan regime does so through the claim that its rules are the command of God. Both present rules as though they were objective and not derived from the position of a particular group. The claim of divinity is indeed harder to contest, but it becomes more fragile once the cognitive distinction is applied, because what remains is a human understanding of religion shaped by a group of men.[47]

[46] Judith E. Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), https://www.cambridge.org/core/books/women-family-and-gender-in-islamic-law/F41E6F5911263CAC6BB42AD65455B9D4.
[47] MacKinnon, *Feminism Unmodified*; MacKinnon, *Toward a Feminist Theory of the State*.

Dominance, or hierarchy, is dismantled further through a shift in the second question posed. The regime proceeds from gender difference, holding that because women are different the rules for women must also be different and that such differentiation is a form of honour. The dominance approach does not contest that difference but asks whether the differentiation creates and sustains a hierarchy. This can be tested through the actual impact of the rules imposed, without any need to determine the will of God. From this vantage point, the protection the regime claims is not always the opposite of subordination but can become another form of subordination when the rules place women in a lower position.

MacKinnon's analysis of family law can be used to read the Afghan regime with one reversal. According to MacKinnon, discrimination against women often escapes legal scrutiny because it is placed as a private family matter, so that oppression can shelter behind the reason that the state must not interfere in that sphere.[48] In the Afghan context the opposite occurs. Norms of honour and segregation that once belonged to the private sphere are raised into public law and enforced by state officials. The technique differs, but the structure of dominance remains the same, since both produce and sustain subordination, control, and the legalisation of the oppression of women.

The regime's most impenetrable defence is the claim that the matter is an internal affair and that criticism from outside is a form of new colonialism. Feminist critique of cultural autonomy exposes the weakness of this claim by showing that a community is not always an equal whole. Within the Taliban regime, rules called "culture" may be made and maintained by the more powerful group, while the group that suffers has no equal standing in determining those rules.[49] Hazara women, therefore, as one of the peoples or ethnic groups living in the central highlands (Hazarajat) and in areas such as Dasht-e Barchi in Kabul, Afghanistan, cannot be excluded

[48] MacKinnon, "Sex Equality under the Constitution of India," 181–202.
[49] Santa Clara Pueblo v. Martinez (1978), https://supreme.justia.com/cases/federal/us/436/49/.

from Afghan identity merely because the regime invokes culture or state autonomy.[50] When one faction determines rules that push women aside, the claim of autonomy ultimately becomes a means of preserving the dominance of the group in power.[51]

That structure of dominance is clearly visible in the male companion rule. The rule not only restricts women's movement but also transfers part of the state's supervisory function into the family by making men responsible for women's compliance. The state need not supervise every woman directly because supervision has been implanted within family relations. Kinship thereby turns into an extension of law enforcement, while women obtain "protection" through dependence on men. In MacKinnon's framework, this situation shows that protection can itself become a means of producing and sustaining the subordination of women.

The Doctrine of *Fitnah* and the Inversion of the Meaning of Protection for Women

The first binary read here is protection as against oppression. In the regime's discourse, protection occupies the privileged pole and oppression becomes an accusation from outside that is rejected. The hierarchy is clear: restriction is read as protection, and whoever calls it oppression is deemed not to understand women's honour.

The reversal becomes visible in the doctrine of *fitnah* (the sexualisation of women), which regards women's bodies, faces, and even – under the August 2024 instrument – women's voices as capable of provoking sexual temptation.[52] As a result, women are placed from the outset as sexual objects, so that their presence in public space is treated as a problem. A policy professing to protect

[50] Minority Rights Group, *Hazaras in Afghanistan* (London: Minority Rights Group, 2025), https://minorityrights.org/communities/hazaras/; "Hazara Women: How Gender and Ethnicity Intersect in the Taliban's Repression," Just Security, 2024, https://www.justsecurity.org/93123/hazara-women-how-gender-and-ethnicity-intersect-in-the-talibans-repression/.
[51] Angela P. Harris, "Race and Essentialism in Feminist Legal Theory," *Stanford Law Review* 42, no. 3 (1990): 581–616, https://www.jstor.org/stable/1228886.
[52] Islamic Emirate of Afghanistan, *Law on the Promotion of Virtue and the Prevention of Vice*, pasal 13,19.

women from sexualisation in fact regards women's very existence as the source of a sexual problem through that way of seeing. Protection and oppression accordingly no longer stand as two opposites, since the protection itself is built through the restriction of women. These policies must therefore be judged from the experience and the consequences borne by women, not from the regime's claims alone.

The fourth step demands more than a reversal. What results is not a new hierarchy with oppression above and protection below, but the collapse of the opposition itself. Protection and oppression can no longer be separated as two opposites, since within this structure protection is applied precisely through mechanisms of oppression. Every strengthening of protection deepens the sexualisation it claims to abolish, so that demands to strengthen the protection of women risk reinforcing the very same restrictions.[53]

The provision banning women's voices in public space confirms that the regime does not merely regulate visual limits but negates the existence of women altogether. When physical presence and voice alike are seen as a form of provocation, the rule loses its moral legitimacy and turns into an instrument of absolute restraint, proving that women were from the outset constructed solely as sexual objects.

Consequently, the validity of these policies cannot be entrusted to the formulating authority, which acts as judge and oppressor at once. Authentic judgement can arise only from the experience of those who bear the consequences directly, uniting the structural and the substantive critique in the recognition that the question of legal validity can never be separated from the question of who holds the authority to determine justice. Judgement can be meaningful only when it is entrusted to those who bear its consequences. It is here that the two analytical instruments meet in an unexpected way. Criticism from within the tradition shows that the regime's interpretation is mistaken, while

[53] Balkin, "Deconstructive Practice and Legal Theory," 743–86.

structural criticism shows why that mistake will never be corrected so long as the authority of judgement remains in the same hands. The question of the content of law and the question of who is authorised to determine that content are therefore not two separate problems.

It is here that the two analytical instruments complement each other. Criticism from within the tradition shows the error of the regime's interpretation, while structural criticism shows why that error persists when the authority to interpret and to enact law remains in the same hands. The question of the content of law cannot therefore be separated from the question of who holds the authority to determine it.

Constructing Sharia and Selecting 'Urf in Taliban Policy towards Women

The second binary is sharia as against *'urf*. In *uṣūl al-fiqh*, *'urf* holds a secondary standing; it is a complement that comes after the principal sources and applies only so far as it does not conflict with the sharia.[54] The hierarchy is firm, and the regime itself upholds it. A member of the regime's Supreme Court has stated that custom, Pashtunwali, popular culture, and the views of the elders stand at the margins, while the first priority is the rules of Islam and the sharia.[55]

The reversal emerges precisely from empirical evidence. What is enforced is not Pashtunwali (the Pashtun tribal society) as it stands, but a small-selected portion of it. That tradition encompasses *melmastia*, *nanawatai*, *badal*, and above all the *jirga*,

[54] Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'Urf and 'Adah in the Islamic Legal Tradition* (New York: Palgrave Macmillan, 2010), https://link.springer.com/; Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), https://www.cambridge.org/core/books/sharia/0071DAB556EC8200DEA1A61D8D4B5A8D.

[55] Austrian Country of Origin Information Centre, *Afghanistan: Pashtuns and the Pashtunwali, Versi 2* (Wina: ACCORD, 2024), https://www.ecoi.net/en/file/local/2106990/2024-04-10_COI_CMS_Research+Paper+Afghanistan_+Pashtuns+and+the+Pashtunwali.pdf.

the settlement of disputes through local deliberation.[56] The regime has in fact dismantled the autonomy of the *jirga* and replaced it with councils led by appointed clerics, so that the deliberative element of that custom disappears while norms of honour and the segregation of women are retained and hardened. Cultural continuity is also difficult to sustain empirically when the same rules are imposed on Hazara, Tajik, and Uzbek populations that have never lived under Pashtunwali, and even more so when the personal status law for Shia citizens, which recognised their own fiqh, was revoked.[57]

These policies are political rather than doctrinally compelled, as is demonstrated by disputes within the regime itself. The Minister of Education who brought forward the proposal to reopen girls' schools in March 2022 was dismissed in September of the same year and replaced by a figure of a harder line, while in January 2025 a deputy minister stated openly that restrictions on women's education are not in accordance with the sharia.[58] If the ban were truly certain in doctrine, differences of that kind would not exist.[59] The transnational religious authority in which the formation of the regime's madrasas is rooted has likewise given no answer when repeatedly asked to issue a fatwa on the ban on women's education. That silence is not merely an absence of response but also a form of exercising authority, since the decision not to speak allows the rule to continue. As a result, the Afghan

[56] Thomas Barfield, *Afghanistan: A Cultural and Political History* (Princeton: Princeton University Press, 2010), https://academic.oup.com/princeton-scholarship-online/book/19647; Austrian Country of Origin Information Centre, *Afghanistan: Pashtuns and the Pashtunwali, Versi 2*; Aamir Jamal, "Why He Won't Send His Daughter to School — Barriers to Girls' Education in Northwest Pakistan," *SAGE Open* 6, no. 3 (2016), https://doi.org/10.1177/2158244016663798.
[57] Minority Rights Group, *Hazaras in Afghanistan*.
[58] Imran Ahmed dan Tanujja Dadlani, *Girls' Education and Divisions within the Afghan Taliban* (Singapura: Institute of South Asian Studies, 2025), https://www.isas.nus.edu.sg/wp-content/uploads/2025/04/ISAS-Brief-1231-ISAS.docx.pdf.
[59] Ibid.

women directly affected bear the consequences of decisions made without their involvement in determining or interpreting that law.[60]

The logic of the supplement explains the structure that has formed. What appears as a secondary addition turns out to constitute what it supplements: the customary norms in force operate as the true source, while doctrinal references serve to justify them after the fact.[61] The deconstructive step does not stop at a reversal that would place *'urf* as the primary basis, since that would only form a new hierarchy. What must be dismantled is the separation between a sharia regarded as pure and an *'urf* regarded as an additional element. Every application of law always takes place in an environment already shaped by particular customs, language, and social structures. The problem, therefore, is not simply that the regime is influenced by custom, but that particular customary norms reinforcing control over women are selected, applied to a multi-ethnic society, and then sacralized as divine command. Norms that are in fact the outcome of human choice thereby appear as though they came directly from revelation.

In the terms of *uṣūl al-fiqh*, this problem is not new. That tradition has long recognised that custom is absorbed into legal products, and it has formulated the maxim that law may change with changing times and circumstances.[62] That recognition requires that the custom used in law be acknowledged as custom rather than as sharia, so that it can be assessed, debated, and altered when circumstances change. The regime instead erases the traces of that custom and presents the result as a fixed divine provision. The problem, therefore, is not the use of custom but the denial that custom helped shape the rules. As a result, the space for correcting the law is closed off, because any change can be cast as opposition to religious command.

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[60] Manish Rai, "Why Indian Deobandis Are Quiet on Women's Education Ban?," *Hasht-e Subh Daily*, 2023, https://8am.media/eng/why-indian-deobandis-are-quiet-on-women-education-ban/.
[61] Derrida, *Of Grammatology*, bab "that dangerous suplement."
[62] Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'Urf and 'Adah in the Islamic Legal Tradition*.

Convergence and Tension between the Two Approaches in Analysing Taliban Policy towards Women

The two analytical instruments converge on four matters. Both reject formalism by judging law from the consequences it produces rather than from its conformity with the text alone. Both also distinguish text from human interpretation, which is always situated in a particular context, test law through actual consequences, and see the legal order as the outcome of human thought and action. On these points of convergence, law can be tested by its context and its impact rather than accepted as given because it is claimed to be a valid rule. This convergence is not theoretical speculation; Muslim family law has already put it into practice within the Muslim legal tradition.[63]

The two instruments hold four points of tension. First, the normative ground. *Maqāṣid* accepts the purposes of Islamic law as a valid foundation, whereas the dominance approach questions how those purposes are shaped by relations of power. Second, the location of authority. *Maqāṣid* places *maṣlaḥah* within legal reasoning, whereas the dominance approach attends to the experience of the subordinated. Third, the meaning of protection. *Maqāṣid* understands it as an effort to safeguard something of value, while the dominance approach tests whether protection in fact produces dependence and subordination. Fourth, the position of women's experience. *Maqāṣid* can accept the understanding of pious women as part of the consideration of *maṣlaḥah*, whereas the dominance approach risks treating acceptance of conservative norms as false consciousness. The difference between them thus concerns the ground of judgement, the source of authority, the meaning of protection, and the way women's voices are understood.

Used on its own, each instrument has a limited reach.[64] *Maqāṣid* cannot always determine which purpose should take

[63] Musawah, *Musawah Framework for Action* (Kuala Lumpur: Musawah, 2009), https://www.musawah.org/knowledge-building/.
[64] Ayesha S. Chaudhry, "How Objective Are the Objectives (Maqasid)? Examining Evolving Notions of the Shari'ah through the Lens of Lineage (Nasl)," dalam *The Objectives of Islamic*

precedence when purposes conflict, so that those in power may still claim their policies to be a form of "protection" for women. The dominance approach, conversely, risks disregarding women who consciously accept conservative religious norms by treating their stance as false consciousness.[65] It also risks reproducing an essentialism that can reinforce the image of women as victims to be rescued from outside.[66] Both must therefore be used with attention to the diversity of Afghan women's experiences and voices, without treating women as a uniform group.

Combining the two instruments shows that what is at issue is not only the content of the law but also who determines that content and how the law affects the position of women. *Maqāṣid* shows that the regime's claims about sharia can be tested against the purposes of law it itself acknowledges, while the dominance approach shows that such interpretation can simultaneously form and sustain a gender hierarchy. Both instruments expose the same problem in the Taliban regime, namely how the claim that a rule is sharia is used to justify restrictions on women, but they dismantle it from different sides. Jasser Auda's *maqāṣid* exposes the weakness

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Law: The Promises and Challenges of the Maqasid al-Shari'a, ed. oleh Idris Nassery, Rumee Ahmed, dan Muna Tatari (Lanham, MD: Lexington Books, 2018), 263, https://rowman.com/; Felicitas Opwis, "Maslaha in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005): 182–223, https://brill.com/.

[65] Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005), https://press.princeton.edu/books/paperback/9780691149806/politics-of-piety.

[66] Kaput, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*; Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," *Feminist Review*, no. 30 (1988): 61–88, https://doi.org/10.1057/fr.1988.42; Lila Abu-Lughod, "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others," *American Anthropologist* 104, no. 3 (2002): 783–90, https://doi.org/10.1525/aa.2002.104.3.783; Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), https://doi.org/10.12987/9780300162714; Sherene H. Razack, "Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages," *Feminist Legal Studies* 12, no. 2 (Oktober 2004): 129–74, https://doi.org/10.1023/B:FEST.0000043305.66172.92; Sherene H. Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2008), https://doi.org/10.3138/9780802094971; Chandra Talpade Mohanty, "'Under Western Eyes' Revisited: Feminist Solidarity through Anticapitalist Struggles," *Signs: Journal of Women in Culture and Society* 28, no. 2 (Januari 2003): 499–535, https://doi.org/10.1086/342914.

of the regime's legal reasoning by testing whether policies claimed to be protective actually achieve the purposes of the sharia the regime also acknowledges. MacKinnon's dominance approach exposes the structure of power behind that reasoning by showing how rules called protection in fact form and sustain the subordination of women. By combining the two, this study shows that the problem with the Taliban is not only that its interpretation of sharia is open to challenge, but also that this interpretation produces a legal structure placing women in a lower position.

Conclusion

Read through a deconstructive framework with two analytical instruments tested side by side, the restrictions on Afghan women after 2021 appear neither as divine law nor as mere cultural continuity. The founding moment of that legal order rests on an authority with no ground outside itself, so that what is presented as revelation can be read as human cognition formed within history and still open to correction. The policies born of it measurably damage the welfare they claim to safeguard and even depart from the school of law the regime itself acknowledges. The same appears in the doctrine of *fitnah*, where policies claimed to prevent the sexualisation of women in fact construct women as sexual objects merely by virtue of their existence, so that protection and oppression can no longer be separated as two opposites. At the same time, custom, doctrinally placed as a secondary element, is raised into norm through processes of selection, universalisation, and sacralisation, showing that a purity of source wholly separate from custom was never available in the first place. Mapping the two instruments reveals convergence in diagnosis but also tension in the ground of their critiques, with limitations inherent in each when standing alone. *Maqāṣid* lacks a sufficient mechanism for determining which purpose should take precedence when purposes conflict, while the dominance approach risks disregarding women's voices when their experience does not fit its theoretical assumptions. Legal criticism must therefore not stop at projecting purposes or tracing structures of subordination alone,

but must reconstruct the authority of the law-maker by placing the experience and the direct voices of the women affected as its principal foundation.

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