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An Analytical Study of Rudolph Peters' views on Implementation of Islamic Criminal law in the Ottoman Empire

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Abstract

Rudolph. F. Peters' opinions on the application of Islamic criminal law in the Ottoman Empire, as expressed in her ground breaking book "Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century," are examined critically in this essay. Peters provides a thoughtful analysis of how Ottoman rulers applied traditional Islamic law while also modifying legal procedures to accommodate political and administrative realities.

The study looks at how Sharia law and qanun (sultanic legislation) are balanced, how hudūd punishments are applied selectively, and how state power shapes criminal justice more broadly. The study emphasizes Peters' contention that the Ottoman legal system, despite having its roots in Islamic principles, showed practical flexibility in applying criminal laws through a historical-legal analysis.

Keywords: Criminal, Ottoman Empire, Punishments, Crime, Legislator.

Introduction

Crime under Islamic law consists of any disobedience to Allah's commandments which is punishable in this world through the legislator¹. One general category of crime consists of those offenses revealed in the Holy Quran with specified punishments that cannot be modified or altered. Offenses in this category include apostasy, attempted coup d'etat, adultery, defamation (false accusations against another), theft, highway robbery, and intoxicating drink. Some

¹ Azhar, A., Badarulzaman, M. H., Muhammad, F., & Zaib, S. Z. M. (2020). Sharī'ah Criminal Law Enforcement in Hisbah Framework: Practice In Malaysia. *Intellectual Discourse*, 28(1), 149-170.

of the fixed punishments are hand amputation for theft, flogging and stoning to death of an adulteress, and for highway robbery, execution, exile from the land, or the amputation of a hand and foot from opposite sides of the body. The second category of crime consists of offenses punishable by retaliation or blood money. While punishments for offenses in this category are set in the Quran, the victim or the victim's caretaker may pardon the offender. In such a case, the offender may pay 'blood money' and be liable to punishment.

Sharia is the guiding way directly associated with the teachings of the Quran and Sunnah. Islamic criminal law is definitely rooted in the revelations for guaranteeing dignity and appreciation of human life values. It potentially protects the peace and security of an individual when an individual is accused of its crime by demonstrating the association between the State and individuals. In this way, the principle of legality, non-retroactivity of criminal laws, and individuality of punishment are the most important principles laid down in Sharia. Islam emphasizes on the actual reason why a person does commit crimes? How can criminal be punished effectively? These two questions are interrelated. To punish crime one needs to understand why there is crime to begin with. The interrelation of these two questions, and their historical context, is relevant to better understanding of human beings and to reforming a criminal justice system that is deemed outdated.

The Muslim jurists, by exercise of their rational faculty to its utmost degree, recorded their reactions to the experiences of the community: they created, rather than discovered, God's law. What they created was a literary expression of their aspirations, their consensual interests, and their achievements; what they provided for Islamic society was an ideal, a symbol, a conscience, and a principle of order and identity².

Substantial Criminal Principles in Islamic Law

The criminal or penal law is the body of law that regulates the power of the state to inflict punishment on persons in order to enforce compliance with certain rules. Such rules typically protect public interests and values that society regards as crucial. Criminal laws, therefore, give an insight into what a society and its rulers regard as its core values (Zedner, L., 2016). Islam is a complete code of life and it guides its believers in every temporal and spiritual matter. The concept of justice in Islam is all pervading and has to be manifested in every sphere of human life. Like other fields of life, Islam has stressed on justice in

² Abdulaziz Sachedina, "The Ideal and Real in Islamic Law," in *Perspectives on Islamic Law, Justice, and Society*, ed. R. S. Khare (New York: Rowman and Littlefield, 1999), 29.

criminal field and has laid down clear injunctions for maintaining criminal justice (Renard, J., 2023).

According to the jurists, substantial of Islamic criminal laws revolve around the following fundamental principles³.

Islamic Criminal Law

Islamic criminal law is a body of legal rules that deals with crimes for which punishments have been prescribed in the Shariah. These crimes are generally divided into three categories:

Hudud: Crimes for which specific punishments have been fixed in the Qur'an and Sunnah.

Qisas and Diyat: Crimes involving bodily harm or murder, which are punishable by retribution or blood money.

Tazir: Crimes for which the punishment is left to the discretion of the judge or ruling authority.

Islamic Crimes and Their Punishments in the Light of Quranic Verses

In Islam, Holy Quran says,

تِلْكَ حُدُودُ اللَّهِ فَلَا تَفْرُتُوهَا-وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ-4

“These are the limits drawn by Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers”.

Allah also says,

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِيَ الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ⁵

“And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous”.

Allah says in Holy Quran;

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۖ أَلْحُرُّ بِأَلْحُرِّ ۖ وَالْعَبْدُ بِالْعَبْدِ ۖ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَنٍ ۚ ذَلِكَ تَخْفِيفٌ

مِّن رَّبِّكُمْ وَرَحْمَةٌ ۚ فَمَنْ آغْتَدَىٰ بِعَدَاةٍ فَلَهُ عَذَابٌ أَلِيمٌ⁶

“O believers! ‘The law of’ retaliation is set for you in cases of murder—a free man for a free man, a slave for a slave, and a female for a female.¹ But if the offender is pardoned by the

³ Al-Ghazali; Abu Hamid, Muhammad Ibn Muhammad, Al-Mustafa, Volume-II, page 66

⁴ The Holy Qur'an, Surah al-Baqarah, 2:229 – “These are the limits set by Allah, so do not approach them. And whoever transgresses the limits of Allah – it is they who are the wrongdoers.”

⁵ The Holy Qur'an, Surah al-Baqarah, 2:179 – “And there is life for you in legal retribution (qisas), O people of reason, that you may become righteous.”

⁶ The Holy Qur'an, Surah al-Baqarah, 2:178

victim's guardian,² then blood-money should be decided fairly³ and payment should be made courteously. This is a concession and a mercy from your Lord. But whoever transgresses after that will suffer a painful punishment”.

Another place, Allah says in Holy Quran;

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ
وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا فَمَن تَصَدَّقَ بِهِ ۖ فَهُوَ كَفَّارَةٌ لَهُۥ وَمَن لَّمْ يَحْكَمْ بِمَا
أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ⁷

“We ordained for them in the Torah, “A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth—and for wounds equal retaliation.” But whoever waives it charitably, it will be atonement for them. And those who do not judge by what Allah has revealed are ‘truly’ the wrongdoers”.

Allah has clearly stated the punishments in the Holy Quran who violate His Hudud (boundaries);

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَن يُقَتَّلُوا أَوْ يُصَلَّبُوا
أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُم مِّنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ۚ ذَٰلِكَ لَهُمْ جِزَاءُ فِي الدُّنْيَا ۚ وَلَهُمْ
فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ⁸

“The only reward of those who make war upon Allah and his messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land”.

Allay says in Holy Quran;

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا
لَهُمْ شَهَادَةً أَبَدًا ۚ وَأُولَٰئِكَ هُمُ الْفَاسِقُونَ⁹

“Those who accuse chaste women ‘of adultery’ and fail to produce four witnesses, give them eighty lashes ‘each’. And do not ever accept any testimony from them—for they are indeed the rebellious”.

Allah says in Holy Quran;

⁷ The Holy Qur'an, Surah al-Ma'idah, 5:45.

⁸ The Holy Qur'an, Surah al-Ma'idah, 5:33.

⁹ The Holy Qur'an, Surah an-Nur, 24:4.

الرَّائِيَةُ وَالرَّائِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدٍ قَوْلًا تَأْخُذُكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ¹⁰

“As for female and male fornicators, give each of them one hundred lashes,¹ and do not let pity for them make you lenient in ‘enforcing’ the law of Allah, if you ‘truly’ believe in Allah and the Last Day. And let a number of believers witness their punishment”. Allah says in Holy Quran;

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءُ بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ¹¹

“As for male and female thieves, cut off their hands for what they have done—a deterrent from Allah. And Allah is Almighty, All-Wise”.

Islamic Crimes and Their Punishments in the Light of Hadith

1. Theft

تُقَطَّعُ الْيَدُ فِي رُبْعِ دِينَارٍ فَصَاعِدًا¹²

“The thief’s hand will be cut off for stealing one-quarter of a Dinar or more”.

2. Adultery

خُذُوا عَنِّي، خُذُوا عَنِّي، قَدْ جَعَلَ اللَّهُ لَهِنَّ سَبِيلًا، الْبِكْرُ بِالْبِكْرِ جَلْدٌ مِائَةً وَنَفْيٌ سَنَةً، وَالثَّيْبُ بِالثَّيْبِ الْجَلْدُ وَالرَّجْمُ¹³

“Take this ruling from me, take it from me — Allah has made a way for them:

For the unmarried, one hundred lashes and exile for one year; and for the married, flogging and stoning”.

3. Murder

لَا يَحِلُّ دَمُ امْرِئٍ مُّسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَنِّي رَسُولُ اللَّهِ، إِلَّا يَأْخُذَ ثَلَاثُ: الثَّيْبُ الرَّائِي، وَالنَّفْسُ بِالنَّفْسِ، وَالتَّارِكُ لِدِينِهِ الْمُفَارِقُ لِلْجَمَاعَةِ»

¹⁰ The Holy Qur'an, Surah an-Nur, 24:2.

¹¹ The Holy Qur'an, Surah al-Ma'idah, 5:38.

¹² Al-Bukhari, Muhammad ibn Isma'il. *Sahih al-Bukhari*, ed. Muhammad Zuhayr ibn Nasir al-Nasir. Riyadh: Dar Tuq al-Naja, 1422 AH, vol. 12, p. 87, Hadith no. 6789, Kitab al-Hudud, Bab: La yuqta' fi aqall min rub' dinar.

¹³ Muslim ibn al-Hajjaj. *Sahih Muslim*, ed. Muhammad Fu'ad Abd al-Baqi. Beirut: Dar Ihya al-Turath al-Arabi, n.d., Book of Hudud, Hadith no. 1690, vol. 3, p. 1317.

“ It is not permissible to shed the blood of a Muslim who bears witness that there is no god but Allah and that I am the Messenger of Allah — except in three cases:

1. A married adulterer,
2. One who kills another (murder),
3. One who abandons Islam and separates from the community”.

4. (Alcohol Consumption)

جَلَدَ النَّبِيُّ ﷺ فِي الْخَمْرِ بِالنَّعَالِ وَالْجَرِيدِ أَرْبَعِينَ¹⁴

“The Prophet ﷺ gave forty lashes to the one who drank alcohol, using palm branches and shoes”.

5. False Accusation of Adultery

اجْلِدُوهُ ثَمَانِينَ جَلْدَةً¹⁵

“One who falsely accuses a chaste woman of adultery) Flog him with eighty lashes”.

6. Apostasy

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ¹⁶

“ Whoever changes his religion (i.e., leaves Islam), kill him”.

5. Introduction of Rudolph Peter

Rudolph Ruud F. Peters passed away in Amsterdam on March 26, 2022, after being born in The Hague on September 16, 1943. Ruud, as he was known by friends, family, and coworkers, was born into a middle-class family in The Hague, Germany, during World War II. From a young age, he became interested in the Arab Middle East. He bought an Arabic grammar to help him learn the language even though he was only in the fifth grade at his Hilversum gymnasium. He took a solo hitchhike to Morocco when he was sixteen, and the following year he used a meager 300-guilder budget to travel to the Middle East, where he managed to stay for over three months. Following this firsthand encounter, he enrolled in classes at the Universities of Amsterdam and Leiden in 1961 to study Turkish and Arabic language and culture. He chose to study Dutch law at the same time,

¹⁴ Muslim ibn al-Hajjaj. *Sahih Muslim*, ed. Muhammad Fu'ad Abd al-Baqi. Beirut: Dar Ihya al-Turath al-Arabi, n.d., Book of Hudud, Chapter on the Punishment for Drinking Wine, Hadith no. 1706, vol. 3, p. 1330.

¹⁵ Abu Dawud, Sulayman ibn al-Ash'ath. *Sunan Abi Dawud*, ed. Muhammad Muhyi al-Din 'Abd al-Hamid. Beirut: Dar al-Fikr, Book of Hudud, Chapter: Concerning the Punishment for Drinking Wine, Hadith no. 4477, vol. 4, p. 146.

¹⁶ Al-Bukhari, Muhammad ibn Isma'il. *Sahih al-Bukhari*, ed. Muhammad Zuhayr ibn Nasir al-Nasir. Riyadh: Dar Tuq al-Naja, 1422 AH, Book of Jihad and Expeditions, Chapter: One should not be punished with Allah's punishment (i.e., fire), Hadith no. 3017, vol. 6, p. 253.

ostensibly because his parents wanted him to pursue a "more solid and promising" course of study. In 1972, he graduated from Leiden with his first degree, a combined BA/MA in Islamic Studies and Cultures. In 1968, he was appointed as a lecturer in the Department of Arabic and Islamic Studies at the University of Amsterdam, where he also received his PhD in 1979.

Rudolph Peter's Academic Contribution Rudolph Peters was hired as a lecturer at the University of Amsterdam's Arabic and Islamic Studies department in 1968 after completing studies in law, Arabic, and Turkish in Amsterdam and Leiden, *Islam and Colonialism*¹⁷. His towering contribution—embodied masterfully in his “Shari’a, Justice and Legal Order: Egyptian and Islamic Law: Selected Essays and Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century”—evolved concurrently with an unparalleled upsurge in scholarly output within the domain of Islamic studies, specifically Islamic legal studies. He became particularly interested in the operation of Islamic criminal law in Egypt in the nineteenth century prior to the British occupation, having been inspired by a collection of Egyptian fatwas from the nineteenth century. His focus on Egypt led to the production of numerous studies in which he applied his extensive understanding of social history to archival materials, including collections of fatwas and court documents. Twenty of the thirty-five articles in *Shari'a, Justice and Legal Order* focus on Egypt in the nineteenth century; these are unquestionably Ruud's most influential works to date in his field. But he also made a significant contribution to the first comprehensive picture of the developing field of fatwa studies, which was the study of Islamic legal institutions. “Islamic Legal Analysis: Muftis and their Fatwas, as well as co-editing the books *Dispensing Justice in Islam: Qadis and their Judgments* and *The Islamic School of Law: Evolution, Devolution and Progress*”. Examining important facets of Islamic legal theory and practice, all three volumes represent turning points in the history of Islamic legal studies in the West.

Overview of the Ottoman Empire and Its Legal System

The Ottoman Empire (1299–1924) was one of the longest-lasting and most influential Muslim empires in history, extending across Europe, Asia, and Africa. Its legal system was characterized by a unique blend of Sharia (Islamic law) and Qanun (Sultanic law). The Hanafi school of Islamic jurisprudence formed the foundation of Sharia-based court rulings, particularly in criminal, civil, and family matters. On the other hand, administrative, fiscal, land, and military issues were

¹⁷ Fahmy, K. (2017). Rudolph Peters and the History of Modern Egyptian Law. In *Legal Documents as Sources for the History of Muslim Societies* (pp. 12-35). Brill

governed by Sultanic laws, which were codified in official compilations known as Qanunnames¹⁸.

Role of Sharia and Qanun (Sultanic Law)

In the Ottoman legal framework, qadis (judges) implemented Islamic law based on the Hanafi School, while muftis issued non-binding legal opinions (fatwas) to guide judges. The Qanun, issued by the Sultan, covered areas where the Sharia was silent or flexible, ensuring smooth governance without contradicting Islamic principles. The most notable example is the legal codification under Sultan Suleiman, known as Kanuni or "the Lawgiver," who systematized legal provisions to balance religious law and statecraft¹⁹. This dual approach helped integrate Sharia with pragmatic governance, creating a flexible yet religiously grounded legal order²⁰.

Dual Legal Structure in the Ottoman Context

The Ottoman legal system was dual in nature, consisting of two parallel but interconnected frameworks:

1. Sharia-based courts, primarily handling personal status, criminal, and contractual matters.
2. Qanun-based regulations, dealing with administrative and public law issues.

This legal pluralism allowed the empire to maintain religious legitimacy while adapting to changing administrative needs. The distinction mirrored a functional separation between judicial authority (rooted in religious jurisprudence) and executive/state authority (rooted in the Sultan's legislative power). This balance was essential for the empire's long-term political and social stability²¹.

Historical Context of Peters' Analysis

Reda A. F. Peters, in her seminal work *Crime and Punishment in Islamic Law*, examined both the theoretical framework and practical application of Islamic criminal law, particularly during the Ottoman era. She argues that while Islamic penal rules, especially the *hudud* punishments, were formally recognized, they were often rarely implemented due to strict evidentiary requirements, judicial discretion, and administrative considerations. Peters highlights how the Ottomans maintained the supremacy of Sharia while simultaneously employing Qanun to

¹⁸ Peters, R. (2005). *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*. Cambridge University Press.

¹⁹ Imber, C. (2002). *Ebu's-su'ud: The Islamic Legal Tradition*. Edinburgh University Press.

²⁰ Gerber, H. (1994). *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*. SUNY Press.

²¹ Hallaq, W. B. (2009). *An Introduction to Islamic Law*. Cambridge University Press.

create legal flexibility. This dual strategy reflected a pragmatic and functional approach to governance²².

An Analytical Study of Peters' views on Implementation of Islamic Criminal law in the Ottoman Empire

Peters' book *Crime and Punishment in Islamic Law* is the strongest chapter of the entire book due to the rich secondary literature of this period, which the Peters draws upon to demonstrate the Ottoman Empire's weighty influence on the implementation, interpretation, and enforcement of Islamic criminal law. Peters also effectively illustrates the interaction of state (*qanun*) and *Shari`a* law in the state's efforts to maintain power and order. Further, Peters effectively illustrates all these points through reference to concrete legal proceedings, thereby intimately linking doctrine with practice.

Peters explains the reasons in his book *Crime and Punishment in Islamic Law* why he selected Ottoman Empire as case study of crime and punishment in Islamic criminal law as under;

“I have selected one specific state: the Ottoman Empire. There are two reasons for my choice. First, because this system is well documented, thanks to the preservation of the Ottoman Sharia court records. Of no other Islamic state in the past are we so well informed about its organization and its legal practice. These records show that the Ottoman Empire, from the sixteenth to the eighteenth centuries, had a stable and fairly well-functioning system of criminal justice. The second reason for my choice is that legal and social historians have already done a great deal of research based on these records”

This study has been conducted to know which approach, strategies and penalties Islam does adopt to fight against crimes through the critical analysis of Adolph Peters' book *Crime and Punishment in Islamic Law* regarding the following particular crimes and punishments in Islam;

1. Fornication and Adultery Joined (Zina)
2. Theft
3. Intoxicating drink
4. Apostate
5. Retribution (Qisas) and Indemnity (Diyat)

Fornication and Adultery Joined (Zina) in the Ottoman Empire

Peters also describes;

²² Peters, R. (2005). *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*. Cambridge University Press.

“The Ottoman Empire was dominated by the Hanafites. In order to create greater legal certainty, rulers could direct the qadīs they appointed to follow one school. However, within one school there also existed various and contradictory opinions. In the course of time, jurists began to assess these different opinions and assign a hierarchy of authority. Some opinions were regarded as more correct than others. Although there was no complete unanimity about these hierarchies, they helped to make the legal discourse of one school manageable, especially for practitioners”. (p. 20)

The above paragraph of Peters’ opinion shows that Hanafites legal approach and interpretation of Islamic criminal system was adopted by Ottoman empire. Hanafite is a madhab which means a school of thought in Sunni Islam. Hanafi madhab, or Hanafite/Hanafi fiqh, is based on the work of Imam Abu Hanifa, who lived in the late 700s C.E. It is considered the most open school of thought as a result of Hanafi's willingness to avoid extremes in practice. In Hanafite approach, the act of Fornication and Adultery Joined (Zina) encompasses two rights, the right of God and the right of society or the community. The fact that a person has committed a forbidden act, even secretly, means that the right of God was transgressed. But when the act becomes public, in one way or another, then the right of society to protect its morals is activated. The earthly punishment of zina, which is its hadd, is then not directed towards the act itself, because this is a matter that only God can judge, but rather towards the fact that such an.

Theft in the Ottoman Empire

This part of unlawfully taking away property (ghasb) is essentially a tort with civil remedies: return of the stolen object or damages. In addition, the thief may be sentenced to a discretionary punishment. Under very special circumstances, however, he may be sentenced to amputation of the right hand (or, according to the Shiites, of the four fingers of the right hand). This fixed penalty is based on K 5:38: ‘As for the thief, both male and female, cut off their hands. It is the reward of their own deeds, an exemplary punishment from God.’ In case of a second offence, the left foot is removed.

Intoxicating Drink in the Ottoman Empire

State Approach & Goals

Circumstantial evidence is not admitted in the trial of hadd offences or of homicide and wounding if retaliation is demanded. The following sixteenth-century fatwa clarifies that a hadd offence (in this case drinking wine) can only be proven by witnesses to the act or a confession. Being in possession of an instrument with which the offence might have been committed is not sufficient for a conviction:

Question: [What happens] if a wine jar is found in Zeyd's possession?

Answer: It is related that Abu Hanifa (may God have mercy on him) went on a Pilgrimage and that he, upon entering Medina, saw the people gathered around a man. They said: 'We found him with a wine-skin, and we wish to inflict the fixed punishment on him.' Abu Hanifa replied: 'He's got the instrument of fornication with him, too. So stone him.' And they left the man and scattered²³.

Apostate in the Ottoman Empire

According to most schools, apostasy is ahadd crime, to be punished with death. This is based on the following words of the Prophet Mohammed: 'If someone changes his religion, then kill him.'⁵⁴ In order to dispel any uncertainty (shubha), the apostate is granted a delay of three days for reflection and repentance after his apostasy has been established in court. If he does not return to Islam, he is put to death. In Hanafite law, the delay for repentance is recommended and not obligatory. In Shiite law only an apostate who previously became a Muslim by conversion is entitled to this delay and to repentance, but not one who was born a Muslim. The latter cannot revoke his apostasy and must be put to death.

Retribution (Qisas) and Indemnity (Diyat) in the Ottoman Empire

Retribution had an important place in the penal system of Ottoman Empire, since it was at the basis of the law of wounding and killing, as we have seen before. It is also occasionally referred to in other contexts, for instance when the qadi requests from the executive officials that an accused be punished in proportion with the seriousness of his crime. The importance of retribution is most evident in the punishment of retaliation for homicide and bodily harm (qisas. or qawad), which is based on the idea of 'a life for a life, an eye for an eye and a tooth for a tooth'. The retributive character is emphasized by the majority view that the way of executing the death penalty for homicide must be similar to the way the victim was killed, and that, under supervision of the authorities, the heirs may carry out the death penalty themselves. The execution of a murderer on the strength of retaliation serves retribution, rather than the protection of society, witness the fact that the imposition of the death penalty depends on the will of private individuals, i.e. the victim's heirs. Protection of society is also the principal aim in taking action against recidivists: 'With regard to repeated offenders who are not deterred by the prescribed punishments, the executive officials are allowed, if the people suffer harm from their crimes, to keep

²³ Colin Imber, *Ebus-Suud: the Islamic legal tradition* (Edinburgh: Edinburgh University Press, 1997), p. 211.

them permanently imprisoned until they die, so as to protect the people from their harm²⁴.

Conclusion

An insightful analysis of the relationship between traditional Islamic jurisprudence and state governance can be found in Adolph Peters' study of Islamic criminal law in the Ottoman Empire. His main conclusion is that the Ottoman legal system showed an extraordinary amount of “flexibility”, enabling the practical application of Islamic legal principles while adjusting to changing administrative requirements.

Instead of rigorously following the classical framework, the Ottomans implemented procedures that allowed “legal realism” without undermining the validity of Islamic law, such as the incorporation of “Qanun” alongside “Sharia”. Peters highlights how crucial institutional structures are to maintaining this equilibrium. The functions of the Imperial Divan, Qadis, and Muftis demonstrate how political and religious leaders worked together to carry out justice. Evidence-based changes, procedural protections, and discretionary penalties (taʿzīr) demonstrated an understanding.

²⁴ Mawardi, *al-Ahkam al-sultaniyya*, p. 220.