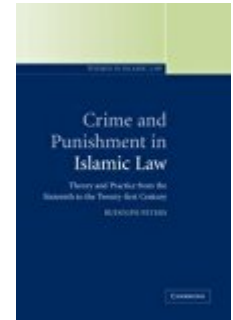


Rudolph Peters. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century.* Cambridge: Cambridge University Press, 2005. xi + 219 pp. \$74.00, cloth, ISBN 978-0-521-79226-4.



Reviewed by Kent F. Schull

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In his *Crime and Punishment in Islamic Law*, Rudolph Peters has provided an excellent, accessible, clearly delineated, and insightful introduction to the development, doctrine, and practice of Islamic criminal law from the sixteenth century to the present. Peters's volume, the second in the Cambridge University Press series *Themes in Islamic Law*, brings together various lines of scholarship on practice and theory into one well-organized work divided into six chapters, including a brief introduction and a conclusion. It also contains maps, clear and informative citations, a valuable list of suggested readings, and a very useful glossary of technical terms.

The first substantive unit of Peters's book is chapter 2, which delineates the crimes, procedures, evidence, and punishments found in Islamic criminal law. The author is careful to differentiate between the interpretations of the various Sunni "schools of jurisprudence" and Shi'ism. Peters also addresses the role played by Islamic court judges (*qadis*) and state executive officials in interpreting, prosecuting, and implementing the law, in addition to meting out its prescribed

punishments. Peters refers to the aggregate of these practices and formulations as the "classical doctrine" of Islamic criminal law, and effectively illustrates the elements of this "doctrine" with actual *fatwas*, court cases, and judgments rendered throughout the Islamic world between the twelfth and nineteenth centuries. His treatment of "doctrine," therefore, is not left in the realm of the theoretical.

One of the greatest strengths of chapter 2 is its discussion of the interrelated roles of state authorities and religious dignitaries in the formulation and execution of Islamic penal law. Peters clearly demonstrates that, due to the strict standards of evidence required by the *Shari'a*, it was extraordinarily difficult to convict and punish those accused of crimes. In the vast majority of cases, criminal culpability could not be established, even though it was clear that the accused was guilty. In such cases, therefore, the fixed punishments specified by Islamic criminal law could not be applied. The defendant was then handed over to state authorities, such as governors, police, and military officials to execute *taz'ir* and/or

siyasa punishments. *Taz`ir* are punishments meted out to those clearly guilty of forbidden and sinful acts found in the *Shari`a*, but whose criminal culpability could not be established according to the confines of Islamic evidentiary regulations. *Siyasa* punishments, however, were meted out at the discretion of state executive officials--such as sultans, governors, police, and military commanders--to individuals accused of committing offenses against public order or safety not explicitly delineated in the *Shari`a*. After lucidly differentiating these two types of punishments, Peters provides very clear definitions, illustrative examples, and explanations of a very complicated subject throughout chapter 2, which thus functions as both an excellent layman's introduction to Islamic criminal law and a useful reference for scholars.

In chapter 3 Peters utilizes the Ottoman Empire as a case study to explore the implementation of Islamic criminal law and to illustrate its relationship with state authorities during what he refers to as "the pre-modern period" (sixteenth to eighteenth centuries). This is the strongest chapter of the entire work, due in part to the rich secondary literature of this period, which the author draws upon to demonstrate the Ottoman state'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. Once more, Peters effectively illustrates all these points through reference to concrete legal proceedings, thereby intimately linking doctrine with practice.

That said, chapters 2 and 3 are somewhat weakened by the author's anachronistic and imprecise use of the term "classical" in reference to the doctrines of Islamic criminal law and his use of the term "pre-modern" when describing the Ottoman Empire between the sixteenth and the eighteenth centuries. Peters's use of "classical" to denote the doctrines in question is illustrated by cases stretching over eight hundred years (from

the twelfth to the nineteenth centuries). This encompasses a period many centuries subsequent to the era that scholars of Islamic history designate "classical," and actually overlaps with the period during which Peters asserts elsewhere in the text (chapter 4) that Islamic criminal law was being "eclipsed." Furthermore, Peters could have more effectively historicized his discussion of Islamic criminal law in chapter 2 by expanding it to include the early Islamic period. This would have afforded more comparative analysis and facilitated his admirable attempts to trace the evolution of Islamic criminal law from the pre-modern Islamic world through the early modern Ottoman Empire and European imperialism to the post-colonial and contemporary periods.

Additionally, contrary to what Peters implies in his introduction (pp. 2-3) (and by the structural organization of his study), the "pre-modern" Ottoman Empire does not constitute an appropriate case study of the implementation of the "classical" doctrines of Islamic criminal law. In fact, his argument in chapter 3 clearly demonstrates the creative nature in which the Ottoman state influenced, altered, and in many cases controlled the implementation of *Shari`a* criminal law, most of which plainly did not follow "classical" doctrines and practices. One of the Great Gunpowder Empires, the post-1453 Ottoman state clearly merits the designation "early modern," as its administrative and military innovations plainly set the empire apart from those of the pre-modern world. Thus, Peters could have more clearly linked the uniqueness of Ottoman innovation to the empire's practice of Islamic criminal law, thereby setting the empire apart from the "classical" period. Obviously, his is not a study on the history of the Ottoman Empire, but so much of his work centers on the Ottomans that placing the historical development and practice of Islamic criminal law within its broader Ottoman context would have added greater weight to Peters's already powerful argument.

The subject of Peters's fourth chapter is the "eclipse of Islamic criminal law" during the nineteenth and twentieth centuries in four regions of the Islamic world: the Ottoman Empire, Egypt, Nigeria, and India. The Ottoman and Egyptian administrations gradually altered the practice of Islamic criminal law by rationalizing and standardizing *siyasa* punishments and by steadily abrogating and circumscribing the *qadis'* authority to adjudicate in criminal matters, thus centralizing the state's power over *Shari'a* penal law. In these ways, both states gradually whittled away Islamic law's jurisdiction over criminal matters until it was completely abolished in Egypt by 1889 and in the Ottoman Empire in 1917 (pp. 133, 134). In Nigeria and India, British imperialists significantly altered Islamic criminal law in order to bring it into conformity with Western judicial standards. These efforts were maintained throughout the nineteenth and twentieth centuries, ultimately resulting in the abolition of Islamic criminal law. Peters's discussion of this process in Egypt constitutes the strongest portion of this chapter. This stands to reason, as nineteenth-century Egypt is the field in which Peters has made some of his greatest scholarly contributions based upon original archival research.[1]

However, due to its immense geographic coverage and the state of the scholarship on this period, which is not as well developed as that of the early modern Ottoman Empire, chapter 4 lacks some of the depth of those preceding it. Obviously, Peters is not responsible for this state of affairs, for as he points out in footnote 43 of chapter 4, "The history of nineteenth-century Ottoman criminal law remains to be written" (p. 127). Thus, this already laudable volume could have been further enhanced by a continuation of the story told in chapter 3 had the research been available to Peters. Notwithstanding this gap in the secondary literature on the Ottoman Empire, this chapter provides an excellent introduction to the state of flux affecting Islamic criminal law during the period of defensive modernization and European

imperialism in Africa, South Asia, and the Middle East. Peters's work makes an important and valuable contribution to the scholarship on this period by providing an excellent and analytically rich overview of its subject, as well as a substantial bibliography. Indeed, Peters's contribution will undoubtedly spur further research into this fertile subject.

In chapter 5, Peters describes current practices of Islamic criminal law in Saudi Arabia, Libya, Pakistan, Iran, the Sudan, and Northern Nigeria, as well as analyzing the relationship between the contemporary practice of Islamic criminal law and internationally recognized standards of human rights. The strength of this section, its breadth of coverage, is also its weakness. Peters provides sweeping overviews of the practice of Islamic criminal law in these numerous countries, but very little in the way of in-depth analysis. In fact, most sections of the chapter deal with a series of reforms and legal enactments. Peters's argument would have been better served by a detailed study of two or three states, permitting more in-depth analysis of the role of the state, and of current practice and its conformity to international human rights standards. This would have been particularly illuminating, given the author's extensive research on the Northern States of Nigeria.[2]

Notwithstanding these minor criticisms, *Crime and Punishment in Islamic Law* stands as an excellent, comprehensive, and accessible introduction to the evolution of the doctrine and practice of Islamic criminal law. This work makes an invaluable contribution to the fields of history, Islamic studies, and comparative legal studies, and will, I believe, serve as the impetus to additional research. I enthusiastically recommend this volume to generalists, specialists, graduate students, and advanced undergraduates with a serious interest in the topic. It has already been extremely useful in my own research on twentieth-century penal reform in the Ottoman Empire.

Notes

[1]. Rudolph Peters, "Administration and Magistrates: The Development of a Secular Judiciary in Egypt, 1842-1871," *Die Welt des Islams* 39 (1999): 378-397; "The Codification of Criminal Law in Nineteenth-century Egypt: Tradition or Modernization?" in *Law, Society, and National Identity in Africa*, ed. J. M. Abun-Nasr et al. (Hamburg: Buske, 1991), 211-225; "Divine Law or Man-made Law? Egypt and the Application of the Shari'a," *Arab Law Quarterly* 3 (1988): 231-253; "Egypt and the Age of the Triumphant Prison: Judicial Punishment in Nineteenth-century Egypt," *Annales Islamologiques* 36 (2002): 253-285; "For his Correction and as a Deterrent Example for Others': Mehmed Ali's First Criminal Legislation (1829-1830)," *Islamic Law and Society* 6, no. 2 (1999): 164-192; "Islamic and Secular Criminal Law in Nineteenth-century Egypt: The Role and Function of the Qadi," *Islamic Law and Society* 4, no. 1 (1997): 70-90; and "Murder on the Nile: Homicide Trials in Nineteenth-century Egyptian Shari'a Courts," *Die Welt des Islams* 30 (1990): 95-115.

[2]. Rudolph Peters, *Islamic Criminal Law in Nigeria* (Ibadan: Spectrum Books, 2003); "The Re-Islamization of Criminal Law in Northern Nigeria and the Judiciary: The Safiyyatu Hussaini Case," in *Dispensing justice in Islamic courts*, ed. M. K. Masud, R. Peters, and D. Powers (Leiden: Brill, 2005).

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