

**CRIME AND PUNISHMENT IN ISLAMIC LAW**  
**Theory and Practice from the Sixteenth**  
**to the Twenty-First Century**

*Rudolph Peters, Cambridge: Cambridge University Press, 2005. Pp. xi, 219*

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*Crime and Punishment in Islamic Law* is a book that presents the methodology of how the religion of Islam castigates those who violate its penal laws. It gives an account of Islamic law enforcement from its inception up to its present day position. There are numerous cases presented herewith which range from theft to banditry, murder, fornication and apostasy in hopes of imbibing the acumen of *qadis*<sup>1</sup> wisdom. All these in turn, inevitably shed light on the complexities of Islamic Law. One can find theory of Islamic law as well as its application wherein its practice elucidates the manner by which justice is met.

Islamic law is different from common law or civil law systems. Rather than having a uniform formulation of law, it comprises a multitude of scholarly discourses which resulted in a proportional stance of various opinions with regards to a legal issue. This problem was somewhat resolved by the creation of schools of jurisprudence like the *madhhab*,<sup>2</sup> and among such schools, a hierarchy was further created in order to quell the many controversies on essential legal issues.

The discourse of the classical doctrine forms the basis for the other chapters in the book which has been examined for its actual role in the criminal law systems in various periods and regions. As compared to other books, *Crime and Punishment in Islamic Law* discusses the procedure and the enforcement ultimately

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\* UST Law Review – Research Editor

<sup>1</sup> A judge ruling in accordance with the Islamic religious law, <http://en.wikipedia.org/wiki/Qadi> (last accessed 31 January 2009).

<sup>2</sup> The word *madhhab* is derived from an Arabic word meaning "to go" or "to take as a way", and refers to a mujtahid's choice in regard to a number of interpretive possibilities in deriving the rule of Allah from the primary texts of the Qur'an and hadith on a particular question, <http://www.scribd.com/doc/2471796/Nuh-Ha-Mim-Keller-What-is-a-Madhhab> (last accessed 31 January 2009).

moving towards the general concepts. This arrangement entails those who are not familiar with Islamic law and then contrast it with their own law.

The discussion herewith is not limited to presenting the doctrines of Islamic law. It also discusses the manner in which Islamic law is inscribed in criminal law enforcement. It is stated that there is a variance of law enforcement from region to region and because of this reason, the Ottoman Empire was selected amongst the numerous case studies to elucidate on the matter. This case study depicts the great diversity between Islamic states on how criminal justice was administered. There is an analysis of the transition which occurred in the Islamic world. In this analysis, the conflicting ideologies between Islamic thought from Western thought were presented. This conflict between Islamic and Western thought is the focal point of the book. Thus, the question of whether these new *Shari'a*<sup>3</sup> penal codes conform to internationally recognized human rights standards is presented.

To countenance this seeming conflict, one must perceive that the purpose of Islamic Penal law is basically to serve its people. The central position in Islamic law can be surmised with words such as benevolence, perfect virtue, human heartedness, and humanity. One cannot draw a sharp line of distinction between morals and Islamic law. In other words, Islamic law would be an extension of its religion. To establish the character of self in one's own moral aspiration, and to help to establish the character of the others is the aim of Islamic law. However, this aim cannot be achieved by imposing the standards of Western thought.

To better implement Islamic principles, the law must simply relate to its people, and that is through the right virtue—the religion of Islam and not simply conform to Western thought. There are certain factors that must be considered to understand fully the concept of Islamic law. The teachings of Islam are principally admonitions and aphorisms addressed to the denizens, with a view of bringing back

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<sup>3</sup> Body of Islamic religious law. The term means "way" or "path to the water source"; it is the legal framework within which the public and private aspects of life are regulated for those living in a legal system based on Islamic principles of jurisprudence and for Muslims living outside the domain, <http://en.wikipedia.org/wiki/Shari'a> (last accessed 31 January 2009).

order and peace into the chaotic world. Islamic law is based on its religion. Law governed by religion makes it appeal to the moral sense and allows free action. If there is no lofty Western thought inherent in Islamic law who alone gives the standard, it is expected that the law will secure obedience from the multitude. Therefore, the law must be based on its own virtue in order for the people to follow it in accordance with ones rightful actions.

Islamic law is based upon and is operated for the benefit of the people just as parents affectionately care for their children. Islamic law is not the law of the West, which makes a nation powerful, wealthy and supreme in arms, holding its people on subjugation. Nor is Islamic law feared and blindly obeyed by the people. Islamic law is one that loves the people and is loved by the people, and whose rules are based upon benevolence and righteousness which is found in Islam.

Islamic law gives a good life to an individual, but such also gives limitations for people might be lavish. Man always seeks for a better and richer life, and will never be content with what he has, so there should be a limiting, yet a good life for every individual. Islamic law thus is focused on a moral living than the punishment. One must admit that man's desire for material things are innate, as well as its distance with poverty and low position. However, it can be controlled by one's self through virtue garnered from Islam, and through this religion comes a true penal system. But even if a law is designated by religion, one must remember that the law owes such position from the people, thus, there should be equal respect.

Islam is the basis of a virtuous law. Its philosophy is mainly egocentric. It must start in the inner recesses and generally move outward. Since Islamic law serves as the model to its people, it is dealt out according to virtue. A focal proposition of Islamic law is that the law should be revered but not feared. The conduct of the law is an essential part. Law by fear is to be condemned.

The evils of contrasting Islamic law with Western thought are callousness and repression. Callousness is the punishment of the people through ignorance.

There will be no punishing of the ignorant if there will be no ignorant people. Ignorance can be erased through education. Through learning, man, as he becomes old will submit to his learning and eventually the law will become a natural part of him, doing anything freely according to his will and not subjugated with Western thought. Ignorance of this premise will lead to cruelty, oppression, and injury. The contrast of Islamic law and Western thought will result in a misconception that the people obey regulations but do not have self-respect. However, forcing people with morality and propriety will result to their obedience according to their own will while saving their self- respect. Oppression here is to make its people liable to punishment for offences, which have not made clear to them due to insufficient notice. Repression here is stated in a sense that the law does unjust actions to the people, condemning them into disciplinary actions. Instead of comparing, the proper application of Islamic law rests upon the premise that law exists for the benefit of the people. Thus, the end of Islamic law is not punishment itself but social harmony and social happiness.

Islamic law lives in political turmoil that triggers it to have a philosophy that concerns a virtuous premise. In Islamic law, actions serve as the link between a law and its people. Islamic law does not only think of chastisement, but also the welfare of the people. Implementing just laws involves decisions regarding virtue, objectivity of the result, and compensation in the people.

There are two parts involved in Islamic law—the part performed by the law in setting the standard and the part performed by the people in molding that standard. Both the law and the people must contribute proficiently in creating, managing, and maintaining a balance between them. People should be taken cared of by the law and the law must be molded in such a way that the people do not treat the law as a misfortune. The law must serve its people with happiness and value. It must never condemn about things that are not established yet. People expect things but might get frustrated in return when the law with which they crafted to follow was not able to achieve it. One must learn to revel in things after having the outcome of the idea. The law and people go hand in hand. A law without its people

to govern cannot govern at all, while a people without a law will result to chaos because no rules are set to unite these people. The relationship of the law and the people is like a father-son relationship. If one obeys fully the father, do it as well to the government. Give filial love to the law as you give it to your father. Man should follow rules according to these rites. Lastly, do good and avoid evil. In doing good and repressing evil, one can get the obedience of the people without the capriciousness of the law.