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## Prisons in the Late Ottoman Empire

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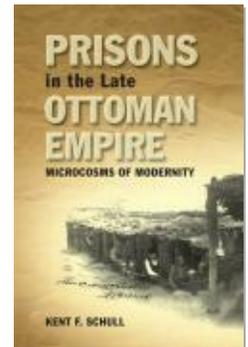
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## **Ottoman Criminal Justice and the Transformation of Islamic Criminal Law and Punishment in the Age of Modernity, 1839–1922**

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Over the course of the long nineteenth century (c. 1770s–1922) the Ottoman Empire experienced a series of internal and external crises that included separatist movements, rebellions, fiscal problems, numerous wars, and European imperialism. In the face of these threats, sultans and administrators attempted vigorous plans of reform aimed at transforming the bureaucracy, legal and education systems, economy, population, and military. As part of this overall restructuring programme, Ottoman statesmen included efforts to create a criminal justice system. Therefore, when the Young Turks, led by members of the Committee of Union and Progress (CUP), deposed Sultan Abdülhamid II and created the first of their two major penal institutions in August 1909 (the Directorate of Public Security), the association between penal reform and concepts, such as civilisation, developmentalism, social engineering, and the centralisation and rationalisation of government power were already part of Ottoman political and intellectual *mentalité*. The close correlation between penal and broader imperial reforms makes the prison an effective window into the process of Ottoman modernity as the empire appropriated and adapted processes of modern statecraft and nation building to its particular imperial context.

This chapter highlights the change and continuity of Ottoman criminal justice policy and practice as lawmakers applied greater measures of state consolidation, standardisation, and rationalisation in order to transform the empire's Islamic legal structures over the course of the long nineteenth century. Taken in aggregate, these changes to criminal justice are astounding, however, seeing only the forest while disregarding its individual trees results in making one forest indistinguishable from another. In other words, without historical specificity, the description and analysis of the dynamism of Ottoman criminal justice and imperial transformation often obfuscates the process of adoption and adaptation, continuity and change, and innovation that took place within the empire. Instead, this dynamism

is often replaced with a narrative of rupture, Westernisation, and secularisation that disregards the uniqueness of Ottoman modernity.

Although a relatively neglected field in Ottoman studies, several scholars have recently made forays into topics such as crime, punishment, policing, and criminal law in the eighteenth and nineteenth centuries.<sup>1</sup> A major purpose of this chapter is to synthesise this growing literature in order to provide a brief overview of Ottoman criminal justice on the eve of modernity as a backdrop to the tremendous transformations of the nineteenth and the early twentieth centuries. It is not the purpose of this chapter to go into great detail regarding all facets of Ottoman criminal justice, but to draw its broad outlines in an attempt to establish the context from whence the transformations that occurred during the late Ottoman Empire emerged, thereby elucidating the deep connections between ‘modern’ Ottoman criminal justice and its supposed ‘medieval’ predecessor. This overview includes a discussion of the philosophy of Ottoman criminal law and its practice in order to demonstrate the antecedents upon which nineteenth-century administrators built, such as the concepts of prisoner rehabilitation, the Circle of Justice, recourse to law, surveillance and public order, and punishments consisting of fines, incarceration, and hard labour.

Building upon this foundation, the second purpose of this chapter consists of another brief discussion concerning the creation of a comprehensive and integrated criminal justice system along generally recognised international standards wherein law and practice became streamlined, centralised, codified, and standardised. During this period, Ottoman administrators transformed policing and surveillance, codified Islamic law into civil and criminal codes, established modern schools of law, selectively adapted European legal codes and practices, and instituted a centralised prison system for the first time in the empire’s history. Officials did not create this system *ex-nihilo*. Instead, they built upon existing structures and practices and transformed them into an entirely new Islamic criminal justice system. Finally, this chapter focuses closely on three intertwined aspects of this new criminal justice system, namely the concrete links between these new penal codes, the extensive delineation of crimes, and the adoption of incarceration as the primary form of criminal punishment. Through the promulgation and then expansion of these new penal codes together with other aspects of this new criminal justice system, the Ottoman administration gradually gained a monopoly over the adjudication of criminal matters. This effectively circumscribed the discretionary power of local administrators and Islamic court judges (*qadi* and *naib*) in adjudicating criminal cases and

meting out punishments. With the exception of fines, incarceration and thus the prison became the primary site of criminal punishment within the empire.

### ***Ottoman Criminal Justice on the Eve of Modernity***

Since the reign of Sultan Süleyman I (r. 1520–66) and through the early nineteenth century Ottoman criminal justice policy and practice functioned in a relatively consistent manner in which Sultan law (*kanun*) and Hanafi Islamic law (*shari'a*) were closely integrated and mutually legitimated. Rulers of Islamic states, including Ottoman sultans, regularly issued decrees to supplement Islamic law in areas where *shari'a* was silent, such as land law, state organisation, public order and security, and various criminal matters. Theoretically, none of the decrees was supposed to contradict Islamic law; instead, they were supposed to preserve it. For example, in the case of criminal matters, various sultans issued decrees providing punishments for theft in which the evidence or specific crime did not meet exact Islamic legal stipulations. These types of decrees were meant to supplement Islamic law and provide authorities with the discretionary means to maintain public order, safeguard sovereignty, protect personal rights including life and property, uphold Islamic law, and punish criminals, thus abiding by the Circle-of-Justice ruling philosophy.<sup>2</sup> Scholars, however, have generally characterised sultan law prior to the 1530s as completely distinct and 'secular' in relation to Islamic law. In other words, the criminal codes issued by Ottoman sultans from the reign of Mehmet II until Süleyman I were not necessarily in 'harmony' with *shari'a*, but allowable since Islamic law made provisions for rulers to keep public order and uphold justice.<sup>3</sup>

Sultan Süleyman I's chief jurisconsult, Ebu's-Su'ud, is credited with 'harmonising' Ottoman sultan law with Islamic law, specifically in the realms of land tenure and taxation, trusts in mortmain, marriage, and crimes and torts.<sup>4</sup> He is also credited with expanding the authority of the Caliphate and applying it to the Ottoman sultan. Not only was Sultan Süleyman I ruler of the Ottoman Empire and leader of all Muslims (*ummah*), but now he was also 'the interpreter and executor of God's law', thus uniting the powers of sovereign and chief jurisconsult in the hands of the Ottoman ruler.<sup>5</sup> This in turn completely blurred the lines between a supposedly secular (*kanun*) and the sacred (*shari'*) law. It also brought the Islamic legal offices of jurisconsult (*mufti*) and judge (*qadi*) fully under the ideological and fiscal authority of the sultan, a process that began centuries earlier.

## *Prisons in the Late Ottoman Empire*

As early as the fourteenth century, the Ottoman Sultanate founded a network of Islamic courts within the urban centres down to the village level of its expanding polity in order to exert its authority and legitimacy. This network of courts served the legal, commercial, social, and political needs of the surrounding areas and reigned supreme in legal matters for all the empire's subjects regardless of socio-economic status or communal identity. Non-Muslims also had recourse to their own religious legal institutions. Those institutions, however, existed only at the express consent of Ottoman authorities. Islamic courts dealt with all aspects of the law, including civil, familial, and criminal, and worked closely with other local authorities, such as military and administrative leaders, to maintain order and uphold the sovereignty of the sultan. In cooperation with other local authorities, court officials often engaged in many of the functions fulfilled by contemporary criminal justice systems, such as investigation, prosecution, surveillance, policing, and punishment.<sup>6</sup>

Islamic court judges, arguably, were the most important local royal officials. They were responsible for a host of other legal and administrative functions, such as marriage and inheritance transactions, public notary, mediation, and protecting civil justice. The judge's salary came from the state as did much of his training and each of his appointments. Notwithstanding imperial oversight, which included declarations of how certain cases should be adjudicated and the standardising of some legal interpretations, Islamic court judges possessed relative autonomy in dispensing justice and mercy, having the ability to consult various sources, including Islamic scholars, the cannon of Islamic jurisprudence, sultanic decrees, and local custom in order to decide the best resolution for a particular case. This was done while attempting to balance numerous personal, local, regional, and imperial interests and power dynamics, one of which was the preservation of Islamic law and practice.<sup>7</sup>

As the Ottoman sultan's most visible dispenser of justice and mercy, as well as preserver of harmony at the local level, the *qadi* worked with many local officials to mete out punishment and maintain public order. These two functions often went hand in hand, each reinforcing the other. As a minimalist or 'reactive state' the Ottoman Empire relied upon a multifaceted array of official and unofficial actors to impose order, punish criminals, and settle disputes.<sup>8</sup> These methods and actors included guarantors (*kefil*), character witnesses, village and neighbourhood watch programmes, local gangs (*kabadayı*), religious officials from various sects, Janissary networks, local governors, garrison troops, market inspectors, guilds, kinship and tribal groups, and – perhaps most

importantly – collective responsibility.<sup>9</sup> While many of these groups had competing interests that could lead to unrest, they regularly cooperated out of common interest.<sup>10</sup>

The purpose of punishment according to Islamic criminal law and sultanic supplements was threefold: retribution for the victim, rehabilitation of the offender, and protection of state sovereignty and society by removing the offender through execution, banishment, or incarceration.<sup>11</sup> These three purposes are not mutually exclusive and often overlapped in terms of intent and application. Punishments meted out ranged from death sentences, to fines, financial restitution, exile, incarceration, and corporeal punishments (flogging, the bastinado, mutilation, and/or amputation). Another common form of punishment combined incarceration and hard labour wherein criminals served time as oarsmen (*kiirek*) in the galleys of the imperial fleet.<sup>12</sup>

The vast majority of punishments meted out for criminal offences were discretionary (*ta'zir*), inflicted by a court judge when the crime or evidence did not meet the strictures of Islamic law. Islamic legal procedure, however, still governed these punishments, which could not exceed *shari'* punishments. In the Ottoman Empire, after the reforms of Ebu's-Su'ud, these punishments were deemed to be in conformity with Islamic law and were sanctioned by it.<sup>13</sup> Ottoman executive officials also possessed other discretionary punishment options (*siyaset*) that were not restricted by Islamic law and could be imposed directly without judicial oversight. *Siyaset* punishments often led to claims of abuse against executive power. Ottoman authorities regularly interceded to curb this type of punishment by virtue of the empire's Circle-of-Justice ruling philosophy. Eventually, *siyaset* punishments were completely circumscribed by various nineteenth-century reforms, as discussed below.<sup>14</sup>

Our contemporary views of the rule of law and rationalised legal systems often characterise this 'classical' system of criminal justice as capricious and despotic.<sup>15</sup> Ottoman court records, archival documents, and even some foreign travel accounts, however, describe a relatively well-organised and implemented system of justice wherein a majority of Ottoman subjects, regardless of religious or communal background, possessed access to legal recourse through official government institutions and procedures, such as *shari'* courts and official petitioning. Limits of communication and technology notwithstanding, the Ottoman justice system possessed relatively clear lines of authority and jurisdiction that theoretically began and ended with the sultan who simultaneously acted as sovereign and caliph, thus bridging the supposed divide between secular and sacred.<sup>16</sup>

### ***Creating a Modern Criminal Justice System***

By the time of its dissolution in 1922, the Ottoman Empire had significantly transformed its criminal justice system to include modern centralised criminal codes, policing organisations, criminal courts, modern law schools, and a centralised prison system wherein the vast majority of convicted criminals received incarceration as their punishment. This transformation did not happen overnight, but often in uneven and haphazard ways, as imperial and local officials attempted to deal with the challenges and crises experienced during this volatile period. This new system was not conjured out of thin air or borrowed wholesale from Western Europe. Instead, it possesses deep roots and antecedents in the Ottoman ‘classical’ justice system outlined above. Themes such as prisoner rehabilitation, prison labour, the Circle of Justice, links between Islamic law and imperial practice, and the rule of law, however, still functioned and took precedence in Ottoman legal circles. The assumptions and world view associated with Ottoman modernity governed this transformation. In other words, Ottoman officials implemented these reforms in order to centralise power over existing criminal justice institutions and practices through the rationalisation and standardisation of legal procedure, criminal codes, court practices and jurisdictions, and the establishment of powerful police forces.

Significant developments that altered this ‘classical’ system can be traced back to the reign of Sultan Selim III (r. 1789–1807) and that of Sultan Mahmud II (r. 1808–39). These developments include early legal codification attempts (Selim III’s *Nizam-i Cedid Kanunlari*), the transformation of surveillance and policing in the imperial capital, the destruction of the Janissary corps, and consequently the weakening of the empire’s system of guilds. Both the Janissaries and the guilds played a major role in maintaining public order in urban areas. Undermining these institutions resulted in the adoption of new methods of surveillance and the creation of new organisations for the maintenance of public order while still relying on neighbourhood and village networks, guarantors, military units, and local religious leaders to fill in the gaps as these new organisations developed.<sup>17</sup>

Taking advantage of these opportunities to expand centralised state power, Sultan Mahmud II created a new policing force as part of his restructured military under the command of the *Serasker* (Minister of War). This force was still responsible for public order and fire fighting in urban areas. Its functions and structure, therefore, were not much different from the Janissaries. Its authority and power, however, were more

centralised under the sultan through his new military force. Eventually, through trial, error, and revision, these police forces were separated from the military, assigned to the Ministry of the Interior and given clear lines of civil authority and power to police the empire's urban areas.<sup>18</sup>

Throughout the provinces, particularly in villages and rural areas, the Ottoman administration haphazardly established gendarme forces during the 1840s, patterned after the French original to maintain order, collect taxes, safeguard highways, and suppress rebellions.<sup>19</sup> These paramilitary forces worked together with local governors and military garrisons. Both urban police and rural gendarme were primarily engaged in crime prevention with very little investigative authority. Criminal investigations were still the responsibility of court judges. Police forces, however, had authority to interrogate and torture suspects in order to extract evidence. Judges and these organisations, therefore, worked very closely together to arrest suspects, collect evidence, and investigate cases.<sup>20</sup>

From 1840 to 1880 Ottoman administrators and bureaucrats completely transformed the empire's legal codes and court systems. In so doing, Islamic civil law was codified in the form of the *Mecelle* and new city and provincial councils were given power to adjudicate in many matters alongside *qadis*.<sup>21</sup> Ottoman administrators also established new courts and adopted new procedures for judging criminal cases. In 1840, lawmakers simultaneously created a new criminal court system and promulgated the first Ottoman penal code. Reformers also extended powers of criminal adjudication to police and provincial councils in urban and rural areas. By 1849 these judicial proceedings became standardised throughout the empire. Then in 1854 the empire established criminal tribunals called *Meclis-i Tahkik*, which assumed responsibility for handling criminal matters from the provincial councils. These courts functioned similarly to Islamic courts, because the accused had no access to legal counsel, judges represented state interests, and proceedings were conducted in local vernaculars.<sup>22</sup>

In 1879, the Ottoman administration officially created the *nizamiye* court system. The foundations of this court system date back to the 1864 Provincial Regulations. The *nizamiye* courts stood alongside *shari'* courts in adjudicating both criminal and civil cases. Avi Rubin's work convincingly demonstrates the blurred boundaries in authority and jurisdiction between *nizamiye* and Islamic courts, because, in most cases, *qadis* presided over both courts. Also in 1879, the empire promulgated the Law of the *Nizamiye* Judicial Organisation (*Mehakim-i Nizamiye'nin Teşkilât Kanunu*) and the Codes of Criminal and Civil Procedure (*Usul-ı Muhakemat-ı Cezaiye Kanunu* and *Usul-ı Muhakemat-ı Hukukiye*,

respectively). Coupled with the new law schools established by Sultan Abdülhamid II, these courts and new legal codes and procedures became the foundation upon which the empire built its criminal justice system.<sup>23</sup>

Parallel to the creation of the *nizamiye* courts, the Ottoman Ministry of Justice also adopted wholesale the 1808 French Criminal Justice Code and named its new code the 1879 Code of Criminal Procedure (*Ceza Muhakemeleri Usulü Kanunu*). Most significantly, this new procedural code established the office of public prosecutor in fulfilment of Article 91 of the 1876 Ottoman Constitution, despite the constitution's suspension by Abdülhamid II in 1878. This was the first time that such an office had ever been established in the empire. This new procedural code also regulated criminal legal proceedings, witnesses, and evidence. For example, there was now a clear separation between the roles and responsibilities of prosecutors from those of judges, which is non-existent under Islamic law. The new code strictly circumscribed the judge's role in the adjudication of the assigned cases. It also more clearly delineated the role of the police by assigning them sole responsibility for conducting criminal investigations and for writing up their findings so that public prosecutors could build their cases against the accused. The police could no longer act as judges under any circumstance. Previous to this new code, the police and market inspectors (*muhtasib*) were, under certain circumstances, empowered to arrest, investigate, try, and punish suspected criminals at the scene of the crime.<sup>24</sup>

Punishment also underwent a dramatic transformation in the nineteenth century. With the exception of capital punishment, which became very rare after 1839, corporal punishments, including torture, were outlawed. While technically still an allowable punishment according to the 1858 Imperial Ottoman Penal Code (IOPC), exile was severely curtailed. Beside fines, imprisonment became the most common form of punishment meted out for criminal behaviour. Incarceration in prisons, jails, citadels, dungeons, and government buildings was not an innovative punishment for nineteenth-century Ottomans. It existed from the empire's earliest days as did incarceration with hard labour. By the middle of the nineteenth century, incarceration with hard labour, however, no longer involved serving in the galleys at the Imperial Shipyards, although it maintained the name *kürek*. Tanzimat-era reformers also established several labour camps for prisoners in places such as Cyprus, Rhodes, and Mytilene.<sup>25</sup> By the early twentieth century, the Ottoman Prison Administration built prison factories in major urban areas. Finally, during WWI the Ottoman regime pressed many prisoners into work battalions to build roads and raise crops as part of the empire's war effort.<sup>26</sup>

In the age of modernity there is an inherent logic found in bureaucratic and administrative standardisation and centralisation. Ottoman sultans and administrators shared this global logic and applied it to their imperial context. Intimate relationships are to be found in the creation of the IOPC, the increased delineation of crimes and punishment, the circumscription of discretionary punishment, and the shift to the almost exclusive use of incarceration as punishment.<sup>27</sup> The remainder of this chapter focuses on the exposition of these interconnections over the course of the long nineteenth century culminating in the Second Constitutional Period.

### ***Penal Codes, Incarceration and Circumscribing Discretionary Punishment***

Ottoman bureaucrats created the empire's first modern penal code in 1840 shortly after the declaration of the 1839 Imperial Rescript of the Rose Garden (*Hatt-ı Hümayun-u Gülhane*).<sup>28</sup> This Penal Code (*Ceza Kanunnamesi*) consisted of thirteen articles in forty-two sections and an epilogue. The main criminal issues covered by this code included treason, incitement to rebellion, embezzlement of state funds, tax evasion, and resistance to authority. The code was neither comprehensive nor exhaustive regarding the many crimes punishable by *shari'* law or local administrative practice. It did stipulate that the punishment of incarceration with hard labour would be added to the traditional penalty of blood-money for homicide. This code, however, did not change traditional forms of punishment, especially exile or hard labour. It still allowed for discretionary corporal punishments and fines (*ta'zir* and *siyaset*) meted out respectively by *qadis* and local governors.<sup>29</sup> In other words, local Islamic court judges and state officials continued to possess great autonomy in identifying, trying, and punishing criminals according to their discretionary powers. This code, however, constituted an important combination of administrative and religious law not previously codified within the empire.<sup>30</sup>

Other items covered in the code include changes in legal procedure and punishments for a variety of criminal offences. For the first time, a code stipulated specific punishments for offences, such as reprimands, corporal punishments, incarceration, banishment, and hard labour. It did not, however, sever the dual system of Islamic law and administrative regulation within the empire. Some offences continued to be adjudicated by the separate systems outlined above, with others being handled jointly. Islamic legal procedures, however, still applied to all criminal proceedings.<sup>31</sup> Reformers intended this code to serve as a bulwark against administrative corruption and abuse of power, thus maintaining the Circle of

Justice.<sup>32</sup> The majority of its articles dealt with these issues as a means to centralise power and impose more effectively the rule of law in government administration.<sup>33</sup>

Ottoman legal reformers addressed some of the inadequacies of the 1840 Code by promulgating the 1851 New Penal Code (*Kanun-i Cedid*). This code consisted of forty-three articles organised into three chapters. It better fulfilled the demands of the 1839 *Gülhane* Decree by focusing on offences involving crimes against life, honour, and property, such as forgery, abduction of girls, and sexual advances toward minors. Additionally, it better clarified procedures adjudicating homicide; stipulated provisions for prisoner medical care; mandated assistance for poor prisoners; and regulated the punishment of slaves. In general, the purpose of the 1851 Penal Code was to assist in the maintenance of public order, prevent tyranny and corruption by government officials, and protect individual rights. It still did not, however, circumscribe the discretionary power of judges and local officials, but it did continue the process of greater delineation of crimes.<sup>34</sup>

Sultan Abdülmecid and Mustafa Reşid Pasha replaced this penal code in 1858 with the Imperial Ottoman Penal Code (*Ceza Kanunname-yi Hümayunu*). Over the next sixty years, lawmakers continued to expand and augment the IOPC.<sup>35</sup> It, therefore, became the foundation for criminal justice transformation including the transition from corporal punishments to fines and incarceration as the primary forms of criminal punishment. In addition to the penal codes of 1840 and 1851, the origins of the IOPC are also closely linked to broader imperial reforms, specifically the promulgation of the 1856 Imperial Decree of Reform (*Islahat Fermanı*).

Five years after Ambassador Canning submitted his ‘Memorandum for the Improvement of Prisons in Turkey’ to Sultan Abdülmecid, he assisted Reşid Pasha in drafting the *Islahat Fermanı*. It announced a wide range of legal and economic reforms including equality for all before the law, protection of property rights, citizenship, and liberty. It also contained a very important passage related to penal reform:

Penal, correctional, and commercial laws . . . shall be drawn up as soon as possible and formed into a code . . . Proceedings shall be taken, with as little delay as possible, for the reform of the penitentiary system as applied to houses of detention, punishment, or correction, and other establishments of like nature, so as to *reconcile the rights of humanity with those of justice*. Corporal punishment shall not be administered, even in the prisons, except in conformity with the disciplinary regulations established by my Sublime Porte, and everything that resembles torture shall be entirely abolished.<sup>36</sup>

These portions of the *Islahat Fermanı* not only exemplify the early beginnings of Ottoman prison reform, but they also map out a robust programme to raise Ottoman punishment to the idealised standards of ‘modern’ civilisation.

In accordance with the *Islahat Fermanı*, the empire promulgated the IOPC on 9 August 1858.<sup>37</sup> Portions of the new code included adaptations of the 1810 French Criminal Code. The most striking difference between this new code and its predecessors was that it included a section devoted to the protection of individual rights. Crimes against individuals were divided into three categories: ‘(1) crimes committed against lives and individual security, (2) crimes against honour and dignity, and (3) crimes against the property of citizens.’<sup>38</sup>

The IOPC’s promulgation represents a fundamental shift in Ottoman and Islamic criminal law. Personal rights were codified and rationalised within an Islamic legal framework wherein the state acted as guarantor and supervisor. Contrary to the views of contemporary scholarship, this was not the Westernisation of Ottoman criminal law. While it was the bureaucratic Ottoman state that codified these laws, Islamic court judges still rendered judgments and presided over all proceedings. Additionally, the very first article of the code claims legitimacy based upon Islamic principles and precedence.<sup>39</sup> The rationalisation and codification of these rights, however, abrogated some of the autonomy of Islamic courts judges and regulated outcomes in a much more standardised way than ever before.<sup>40</sup> Instead of characterising these reforms as the secularisation of Ottoman criminal law and proceedings, they should be viewed as the continuation of a standardising and centralising process of Islamic criminal law that built upon the 1840 and 1851 penal codes.

The IOPC was the forerunner to larger reform efforts intended to overhaul, centralise, standardise, and rationalise the entire Ottoman judicial system. This restructuring eventually included the drafting of the *Mecelle*. As mentioned above, it also laid the groundwork for the circumscription of *qadi* discretionary power. Judicial reforms, standardising legal procedures, practices, and punishments and codified legal codes limit a judge’s autonomy in legal interpretation. The IOPC also facilitated the creation of *nizamiye* courts. While the *nizamiye* and *shari’* courts worked in close cooperation for several decades, by 1917 the *nizamiye* courts superseded *shari’* courts in all civil and criminal matters, except concerning inheritance and family law.<sup>41</sup> While transforming the empire’s courts and legal codes to meet the strictures of the Modern World System, administrators still utilised the same Islamic legitimating structures employed for centuries.<sup>42</sup> Ottoman rulers and lawmakers built off the empire’s own

traditions while applying modern instrumentalities of governance to their specific imperial context.

An analysis of the transformation of the IOPC from 1858 to 1911 clearly demonstrates the shift in the conceptualisation of crime and punishment in the Ottoman Empire during this period. The code was greatly expanded by stipulating many new crimes with fixed punishments. With the exception of execution, lawmakers discontinued all forms of corporal punishment. They also outlawed torture and completely circumscribed the ability of local officials to impose discretionary punishments (*ta'zir* and *siyaset*). Administrators replaced these punishments with clearly delineated fines and prison sentences according to the type and severity of the crime committed. Some prison sentences included hard labour (*kürek*), especially in cases of serious crime (*cinayet*).<sup>43</sup>

By 1911 the IOPC contained 264 articles dealing with criminal legal procedures, crimes, liabilities, and punishments. The code was divided into four sections, a 'Preliminary' section and three chapters. The 'Preliminary' consisted of forty-seven articles split into four parts. These parts set forth the general grades and degrees of offences, legal procedures, and punishments for serious crimes (*cinayet*) and lesser offences (*cünha* and *kabahat*). The 'Preliminary' also stipulates the guidelines for determining criminal culpability.<sup>44</sup>

The first chapter of the IOPC delineates crimes against the Ottoman state and the general well-being of its populace as well as their associated punishments. It includes 121 articles divided into sixteen parts. The first two parts deal with crimes that threaten the external and internal security of the empire, such as espionage, incitement to riot and civil war, brigandage, banditry, and abrogation of the constitution. The vast majority of these crimes carry the death sentence. Other parts of this chapter deal with bribery, theft of state property, abuse of office, negligence of duty, disobedience to government officials, aiding and abetting criminals, impersonating government officials, interfering with religious privileges, disrupting imperial telecommunications, censorship, counterfeiting, forgery, and arson. The majority of these crimes are punishable by fine, loss of office and privilege, and imprisonment.<sup>45</sup>

The second chapter is divided into twelve parts containing eighty-six articles detailing individual crimes. The enumerated crimes include homicide, bodily injuries, threats, abortion, selling adulterated beverages and medicines, violations of honour (rape, molestation, or kidnapping), improper arrest and incarceration, perjury, slander, vituperation, theft, bankruptcy, embezzlement, breach of contract, fraud, and the destruction of private property. According to the stipulated punishments, the vast

majority of these crimes are punishable by various lengths of incarceration, fines, and death.<sup>46</sup> The third chapter of the IOPC consists of twelve articles all detailing minor offences (*kabihat*) and their associated punishments. These offences all pertain to matters of sanitation, cleanliness, and the police. Some of the particular offences include improper maintenance of chimneys and furnaces, disturbing the peace with loud noise or raucous behaviour, public drunkenness, and the improper burial of corpses. Most punishments consist of fines and very short prison sentences (usually incarceration for a period of twenty-four hours to a week).<sup>47</sup>

The changes to the IOPC during the Second Constitutional Period culminated a continuous process of revision since the code's adoption in 1858. On 4 June 1911, the Ottoman Parliament repealed and reissued the IOPC in its most expansive form.<sup>48</sup> The major modifications of 1911 include:

1. new stipulations regarding the punishment of repeat offenders
2. outlawing the use of torture in order to extract the payment of court fees, fines, and the restitution of stolen properties
3. the seizure of articles prepared and/or used for committing an offence
4. the use of incarceration for unpaid fines or the inability to pay fines
5. the deduction of time served prior to trial and sentencing
6. regulations about determining the criminal culpability of children, the insane, and those who committed an act of self-defence
7. punishments for criminal intent
8. offences and punishments pertaining to the external and internal security of the empire
9. new bribery-related crimes and punishments
10. crimes related to the opposition or the circumvention of state regulations, particularly those concerning public health, hygiene, security, and order
11. punishments meted out for dereliction of duty by state officials
12. regulations concerning the unlawful entry into private premises
13. regulations forbidding the ill-treatment of individuals by government officials, particularly in relation to torture or bodily harm
14. regulations and punishments related to persons opposing, disobeying, or insulting government officials
15. offences and punishments pertaining to impersonating government officials
16. punishments pertaining to the destruction of telephone and telegraph communications
17. regulations and punishments related to forgery

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18. regulations and punishments pertaining to arson and the manufacture, possession, and selling of illegal weapons and explosives
19. crimes and punishments related to homicide and physical assault
20. crimes and punishments pertaining to persons causing abortion, selling adulterated drinks, or selling poisons without guarantee
21. regulations and punishments regarding persons who violate honour, such as through molestation, illicit sexual relations, kidnapping, or rape
22. punishments and amendments pertaining to unlawful incarceration and the kidnapping of infants and children, especially girls
23. punishments and regulations regarding calumny, vituperation, and the divulgence of secrets
24. regulations and punishments pertaining to theft
25. regulations and punishments concerning the destruction of government and private property
26. punishments pertaining to persons guilty of misdemeanours (*kabahat*) against matters of sanitation, cleanliness, and the police.<sup>49</sup>

Lawmakers altered every section of the code. In fact, out of the 265 articles, a total of fifty-six were rescinded, revised, and/or expanded.<sup>50</sup> This constitutes the revision of more than 17 per cent of the code.

These 1911 revisions demonstrate the CUP's intent to consolidate greater amounts of power into the hands of the state and rationalise the practice of its criminal legal system by reigning in the autonomy of local judges and administrators; upholding state sovereignty, individual rights, and the protection of private property; and maintaining public order. CUP motivations to gain greater access to the lives of the population were also at work. The June 1911 IOPC transformations regarding 'Crimes against Honour', 'Theft', and 'Violent Crimes' demonstrate these changes and CUP goals in terms of criminal delineation, punishment, and discretionary authority.

Prior to the promulgation of the IOPC, local officials and Islamic court judges usually punished those guilty of violent crimes, theft, or crimes against honour according to their discretionary authority (*siyaset* or *ta'zir*), especially since Islamic law is silent on most crimes associated with these categories. As long as these punishments did not equal or exceed those stipulated in *shari'a*, the vast majority of punishments meted out for these offences consisted of a combination of fines and corporal punishments. This gave local officials enormous autonomy in dealing with these offences and often led to accusations of abuse of power.<sup>51</sup> With the promulgation of the IOPC and its greater delineation of crimes and pun-

ishments, more and more of local official's discretionary penal authority was abrogated.

For example, in 1911 the Ottoman Parliament significantly altered the section of the IOPC dealing with crimes against an individual's honour, including sexual offences, perjury, calumny, slander, and vituperation (Articles 197–215 inclusive).<sup>52</sup> Originally Article 201 only dealt with the corruption of youth. In 1860, however, this article was expanded to include adultery and its related punishments. According to Islamic law, adultery is a *hadd* offence and carries with it the penalty of death by stoning. This punishment was rarely applied, because

to prove adultery/fornication, four male witnesses must independently testify to the fact that they have . . . seen the man's sexual organ penetrate the woman. Should any of the four testimonies contradict the other three in any fashion . . . the four witnesses will be charged with slander and whipped eighty lashes each. [Slander of this type, consequently, is a different *hadd* offence.]<sup>53</sup>

Punishment for this crime was regularly handed over to local authorities whom exercised their discretionary power to punish the guilty with lashes, imprisonment, and so on. The punishments called for in the 1860 version of the IOPC were very one sided and harsher on the female perpetrator than on the male. This revision mirrored exactly the 1810 French Penal Code. In 1911, however, the punishments of incarceration were made exactly equal for both males and females, but in addition to jail time, males also had to pay a fine.<sup>54</sup> This is, no doubt, an interesting discriminatory reversal of the earlier code.

The 1911 version of Article 206 represents an example of the CUP completely rescinding the previous versions of the article and replacing it with a highly modified and more comprehensive one. All versions of the article deal with the crime of kidnapping children and girls at the age of puberty. The most significant changes consisted of, first, expanding the victims of kidnapping to include adults as well as children; second, expanding the victims of kidnapping to include males as well as females; third, even though victims now included both sexes, female victims were still the primary focus of the article; fourth, altering the criteria for determining a child's criminal culpability – originally determined by the commencement of puberty according to Islamic law, it was now set uniformly at the age of fourteen; and, finally, unlike the 1858 version of Article 206, the 1911 version removed all jurisdictions regarding 'Crimes of Honour' from *shari'* courts. Only the *nizamiye* courts could adjudicate these types of crimes, thus abrogating the *qadi's* authority to mete out discretionary punishment by subjecting his decisions to *nizamiye* court procedural provisions.<sup>55</sup>

The crime of vituperation and its associated punishments was the subject of Article 214. The original 1858 version briefly outlined only the basics of the crime, such as '[falsely] ascribing some vice or otherwise' to another person, and stipulated as punishment a fine or a short period of incarceration.<sup>56</sup> In 1911, however, parliament rescinded the 1858 version and replaced it with a substantially larger article that extensively expanded the definition of vituperation. This expansion stipulates what constitutes vituperation, in what setting the crime must be committed (in public with witnesses or in print), the rights of the accused, and the requisite punishments (from twenty-four hours to six months of incarceration and/or a fine of five to fifteen Liras). In fact, the original article is only fifty-six words long, but the 1911 version is almost 1,000 words in length.<sup>57</sup>

Theft (*sirkat*), in all its related forms, including petty theft, violent theft, breaking and entering, fraud, embezzlement, and armed robbery, constituted the second most prevalent crime in the Ottoman Empire during the nineteenth century.<sup>58</sup> Several of the IOPC's articles relating to theft were among the most heavily revised. For example, out of the twenty-six articles dealing specifically with theft, six were almost completely restructured in 1911. These revised articles were 220, 222, 224, 225, 226, and 230. Articles 216–41 inclusive stipulate the various offences associated with theft related crimes.<sup>59</sup>

The specific types of revisions made in 1911 include strengthening the punishments and expanding the criteria for breaking and entering. In the 1858 version of Article 220, breaking and entering only referred to drilling through, digging under, climbing a wall, or breaking down a door or window in order to gain access to a building. In 1911, this type of crime was expanded to include the breaking and entering into any type of closed structure, be it a building, safe, cupboard, and so on.<sup>60</sup> This augmentation greatly expanded the definition of theft in order to strengthen protections for private property. It also expanded the Islamic definition of breaking and entering, upon which the 1858 definition was based.

Islamic criminal law was still the basis of the definition for this crime, since theft is one of the original *hudud* offences described in the Quran and Islamic jurisprudence. According to these sources, however, theft is a very circumscribed crime.<sup>61</sup> Out of necessity, therefore, Islamic law allotted enormous amounts of discretionary authority to court judges and local officials to punish all theft-related crimes. With the Ottoman Parliament's expansion of the IOPC's definition of theft, it severely limited the exercise of discretionary punishments.

Many revisions either delineated more crimes and/or made punishments more severe. For example, revisions to Article 222 in 1911 simply

increased the punishment according to the circumstances under which people committed theft, such as whether the theft occurred at night or day, whether the thief was armed or not, and whether the crime was committed by a servant or apprentice against her/his master. The punishment was increased from six months to three years of incarceration to one to three years of incarceration.<sup>62</sup> Other revisions simply imposed harsher penalties for crimes already stipulated in the code. In many cases, officials doubled the stiffest penalties of incarceration as demonstrated by Articles 224, 225, and 226. An additional revision to Article 224 included an expansion of the number of items whose theft would incur a certain punishment. These items were mainly agriculturally related, such as draft animals, horses, and tools.<sup>63</sup>

The most extensively revised theft-related article was Article 230. The original version dealt only with petty theft and its associated punishments. The Ottoman administration, however, expanded and revised this article several times from 1858. The most significant changes included making those who purchase, receive, and/or sell stolen goods liable for the theft of the items. Revisions also included the reduction of punishment for those who voluntarily came forward regarding their crimes, confessed them, and made restitution prior to arrest or judicial hearing.<sup>64</sup>

The protection of private property was a key facet of CUP penal reform, as reflected by the number of revisions made to theft-related IOPC articles and by the number of prisoners arrested, convicted, and sentenced for theft-related crimes. Protecting private property had always been important to Ottoman rulers and Islamic polities in general, dating back centuries.<sup>65</sup> During the nineteenth century, theft-related regulations and Islamic law were brought into close synchronisation. Many scholars characterise these rationalising legal reforms as the Westernisation and secularisation of Ottoman legal norms eventually resulting in the abrogation of Islamic law.<sup>66</sup> This portrayal is incorrect; Ottoman bureaucrats during the nineteenth century were not abrogating Islamic criminal or civil law, but standardising and rationalising it in the hands of the state. Administrators utilised Islamic law to justify these changes and at the same time transformed *shari'a* to fit the needs of a modern imperial state. No Ottoman administration did this more than the CUP during the Second Constitutional Period. The protection of private property was particularly important to the CUP, because of its attempts to build a middle class, increase private enterprise, foster industrialisation, and promote the economic development and independence of the empire.<sup>67</sup>

Violent crime represents the most prevalent crime in the Ottoman Empire, according to the 1910–11 crime statistical reports and the 1912

Ottoman prison surveys.<sup>68</sup> IOPC articles 168–91 dealing with violent crimes, such as threats, physical assault, and homicide were among the most heavily augmented and expanded in 1911.<sup>69</sup> According to Islamic law, ‘provisions regarding offenses against persons, i.e. homicide and wounding, [are] subdivided into (a) those regarding retaliation (*qisas*) and (b) those regarding financial compensation (*diya*) . . . and . . . are expounded in the *fiqh* books with great precisions and in painstaking detail’.<sup>70</sup> Islamic court judges oversaw the restitution and retribution demanded by these crimes, but Islamic law also allotted discretionary punishments associated with these crimes to *qadis* and other local officials.<sup>71</sup> Revisions to the IOPC continued to circumscribe these discretionary punishments and eventually subjugated all homicides to court proceedings.

Article 170 was the first article related to violent crime to be amended in 1911. The original article mandated the death penalty for premeditated homicide (*‘amden katl*). In 1911, Ottoman lawmakers amended it to include the death penalty not only for those convicted of premeditated homicide, but also for those who wilfully kill (*katl-i kasdi*) their ‘ancestors of either sex even . . . without premeditation’.<sup>72</sup> This change is significant, because when combined with the changes made to Article 179, violence against an elder relative of either sex, for the first time, falls under the jurisdiction of *nizamiye* courts, thus limiting the authority of *qadis* to adjudicate these crimes according to Islamic legal procedures. This is an important example of the CUP consolidating more power over the family within the hands of the state rather than leaving it in the hands of Islamic courts. It is also an important example of the state attempting to gain more power over all facets of Ottoman life.<sup>73</sup>

Regarding homicide, lawmakers significantly changed and expanded Article 174, which originally read:

If a person has killed an individual without premeditation he [or she] is placed in *kyurek* [*kürek*] for a period of fifteen years; but if this matter of destruction of life has taken place while committing another *Jinayet* [*cinayet*] either before the commission or after the commission, or for the sake of committing a *Junha* [*cünha*], the person destroying life is punished with . . . death according to [the] law.<sup>74</sup>

The 1911 article expanded the 1858 version by providing greater protection for government officials while performing their duties and made significant clarifications regarding punishments associated with accidental homicides.<sup>75</sup> Other alterations to homicide-related articles include more severe punishments for accomplices.<sup>76</sup> Article 177, which dealt with assaults that result in the loss of use of a bodily member, was further

strengthened and clarified in 1911. Punishment now consisted of a prison sentence of at least six years' hard labour and the perpetrator was responsible for the victim's medical expenses.<sup>77</sup>

It should not be surprising that the prosecution of violent crimes, such as assault, rape, and homicide, would comprise a major portion of IOPC reforms. Central to Ottoman administrative goals was the need to maintain public order and discipline. As the state relied less on intermediaries and increasingly sought to centralise its authority over the use of force and punishment, there was an increased confluence of what has been characterised as 'secular' and 'religious' law and legal practice. Islam was not being abrogated, but increasingly standardised to fit the demands of a rapidly changing world.

### ***Conclusion***

By 1918, the Ottoman Empire possessed a powerful police force, codified penal codes, law schools, a fully developed court system with extensive procedural regulations, and a modern prison system. This functioning criminal justice system arrested criminal perpetrators and took them to police stations for interrogation as part of a criminal investigation. A lawyer was assigned to the accused, and a criminal prosecutor was assigned to the case. Judges oversaw the proceedings of the court case and issued a decision and punishment as prescribed by the IOPC. Depending on the seriousness and circumstances of the crime, judges imposed a fine, a prison sentence for a set period of time, or both. Additionally, the convicted even had the right to appeal the judge's decision. Once convicted criminals had served their prison sentences then they could expect a return of their full citizenship rights. They were, however, placed under probationary supervision, usually equal in length to their prison sentence.<sup>78</sup>

In sum, this criminal justice process constitutes an enormous transformation from early modern practices. Lawmakers and administrators, however, built this new system upon existing legal structures, procedures, and legitimation. This transformation possesses deep roots in Ottoman sensibilities towards notions of justice, law, rights of subjects and rulers, and punishment. In other words, this transformation should not be interpreted as Ottoman Westernisation, but the empire's appropriation, adaptation, and implementation of the assumptions of the modern world to its own imperial context. Ottoman imperial needs for greater rationalisation of procedure, standardisation of practice, and concentration of power all influenced this transformation of legal practice and punishment.

The confluence of the need for more consolidated administrative power,

a desire to impose increasing amounts of social control and public order, and a greater need for access to and control over the lives of the population led the Ottoman administration to create and then greatly expand the IOPC over the second half of the nineteenth century by standardising punishment and extensively delineating criminal offences. These actions had the cumulative effect of reining in the discretionary power of local officials (judges and governors) and making incarceration the primary type of punishment imposed for criminal offences. Violent crime, theft, and crimes against honour as stipulated in the IOPC all demonstrate this confluence and its associated outcomes.

In the end, the Ottoman drive for state centralisation, standardisation, and rationalisation of Islamic criminal law circumscribed the discretionary power of the *qadi* to such an extent that the practice of Islamic criminal law became much more rigid. Consequently, these efforts laid the foundation for Islamic criminal legal practices in many contemporary Muslim states. The harsh punitive legal actions carried out in Saudi Arabia, Iran, Nigeria, or by the Taliban are not medieval, but wholly modern. They are primarily a response to the demands of the modern state. With the application of new methods of governance, the processes built into Islamic law to maximise the restoration of communal harmony and minimise harsh punishment have been undermined in order to create a rationalised, codified, standardised, and uniform Islamic legal system for the Ottoman Empire. It was not the Ottoman reformers' intent to make Islamic criminal law more punitive. The punishments meted out for particular crimes by the IOPC parallel their Western counterparts in terms of jail sentences, fines, and even the death penalty. However, when a codified and standardised Islamic criminal code meets a centralised state apparatus and a radical ideology, the overwhelming outcome appears to be the extreme application of Islamic punishment as the norm rather than the rare exception as practised throughout Islamic history.

At the same time that lawmakers were creating comprehensive penal codes, the empire was also transforming its prisons in order to accommodate the transition to incarceration as the empire's primary punishment for criminal activity. This prison reform programme culminated in the Second Constitutional Period. As the CUP overhauled the IOPC, it also implemented the first of its extensive prison reforms in late 1911 and early 1912. This included the creation of the first centralised Ottoman Prison Administration, the conduct of a comprehensive prison survey, and the development of a comprehensive programme to refurbish and modernise the empire's prisons and jails. It is no accident that Ottoman officials enacted interrelated judicial, criminal, and penal reforms in 1911–12.

## Notes

1. See, for example: Ginio, 'Administration of Criminal Justice in Ottoman Selanik'; Zarinebaf, *Crime and Punishment in Istanbul*; Başaran, 'Remaking the Gate of Felicity'; Şen, *Osmanlı'da Mahkum Olmak*; Yıldız, *Mapusane*; Gürsoy, *Hapishane Kitabı*; Lévy and Toumarkine, *Osmanlı'da Asayiş, Suç ve Ceza*; Lévy-Aksu, *Ordre et désordres*; Rubin, *Nizamiye Courts*; Peters, *Crime and Punishment*; Miller, *Legislating Authority*; Deal, *Crimes of Honor*; Lévy, Özbek et al., *Jandarma ve Polis*; Türker, 'Alternative Claims on Justice and Law'; and Paz, 'Crime, Criminals, and the Ottoman State'.
2. Peters, *Crime and Punishment*, pp.71–5; and Darling, *History of Social Justice*, pp.2–12. Darling (p.2) argues that the Circle of Justice possesses deep roots in the Middle East dating back to ancient Mesopotamia and was appropriated by all Islamic polities including the Ottomans. This self-referential ruling strategy linked sovereignty and prosperity to the maintenance of justice and protection of the population from administrative exploitation: 'There can be no government without men; No men without money; No money without prosperity; And no prosperity without justice and good administration.'
3. Imber, *Ebu's-Su'ud*.
4. Ibid.; and Heyd, *Studies in Old Ottoman Criminal Law*.
5. Imber, pp.75–6.
6. Imber, *Ottoman Empire*, pp.216–51; Peters, *Crime and Punishment*, pp.69–102; Inalcik, *Ottoman Empire*, pp.71–5; and Pierce, *Morality Tales*, pp.1–125.
7. Ergene, *Local Court, Provincial Society and Justice*, pp.43–55, 99–124; Gerber, *State, Society, and Law*, pp.25–78; Imber, *Ebu's-Su'ud*, pp.3–8; Pierce, pp.86–125; and Peters, pp.69–102.
8. A minimalist state limits its societal intervention to preserving public order and regime sovereignty. It also provides an official forum whereby subjects can settle difficult disputes and gain official legitimacy for particular actions. See Damaška, *Faces of Justice and State Authority*, p.73; and Paz, p.15.
9. Collective responsibility is the principle of holding accountable a community or group for a crime when an investigation produces no guilty party, such as a murder committed in a city quarter or village. It is the community or village that becomes responsible to produce the perpetrator or make restitution for the crime. See Baer, 'Transition from Traditional to Western', p.151; and Zarinebaf, pp.125–40.
10. Başaran, pp.120–56; Paz, pp.15–21; Peters, *Crime and Punishment*, pp.8–19, 30–8, 75–9, and 96–102; and Zarinebaf, pp.73–80, 128–40, and 164–77.
11. Peters, *Crime and Punishment*, pp.30–1 and 96–102.
12. Başaran, pp.120–56; Paz, pp.15–21; Peters, *Crime and Punishment*, pp.8–19, 30–8, 75–9, and 96–102; and Zarinebaf, pp.73–80, 128–33, and 164–77.
13. Imber, *Ebu's-Su'ud*, pp.210–13.

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14. Peters, *Crime and Punishment*, pp.125–33 and 195–6; and Darling, pp. 138–53.
15. Weber, *Economy and Society*, pp.976–8. For a detailed discussion of the merits and problems of Weber’s *Kadijustiz*, see Gerber, pp. 25–42; Powers, ‘Kadijustiz or Qadi-Justice?’; Semerdjian, ‘*Off the Straight Path*’, pp. xxi–xxiv; and Zarinebaf, pp. 141–6.
16. Imber, *Ebu’s-Su’ud*, pp. 1–62; Gerber, pp. 25–78; and Peters, *Crime and Punishment*, pp. 69–71.
17. For Sultan Selim III’s reign see Başaran, pp.106–16, 137 and 150–6; and Zarinebaf, pp. 74–5 and 126–40. For a discussion about the relationship between the guilds and Janissaries, see Quataert, *Ottoman Empire*, pp.134–40. Regarding the *Nizam-i Cedid Kanunları* see Koç and Yeşil, *Nizâm-i Cedîd Kanunları*.
18. Ergut, *Modern Devlet ve Polis*; Özbek, ‘Osmanlı İmparatorluğu’nda İç Güvenlik’; Swanson, ‘The Ottoman Police’; and Fahmy, ‘Police and the People’.
19. Özbek, ‘Policing the Countryside’.
20. Peters, *Crime and Punishment*, pp. 8–11.
21. Adopted as the empire’s official civil code in 1877, the *Mecelle* represents the first systematic attempt to codify and modernise Islamic civil law (*shari’a*) according to Hanafi jurisprudence. It was prepared and written from 1869–76 by a commission directed by Ahmet Cevdet Pasha and consists of sixteen volumes containing 1,851 articles. For a detailed discussion of the creation of the *Mecelle* and its affect on the practice of Islamic law, see Messick, *Calligraphic State*. For an English translation of the *Mecelle*, see Tyser and Demetriades, *Mejelle*.
22. Paz, p. 18.
23. Rubin, *Nizamiye Courts*, pp. 1–54.
24. Rubin, ‘Legal Borrowing and its Impact’ and ‘Ottoman Judicial Change’; Peters, *Crime and Punishment*, p. 80, 90, and 129; and Young, ‘Code of procédure pénale’, 26 June 1876, *Corps de Droit Ottoman*, vol. VII, pp. 226–300.
25. See Yıldız, *Mapusane*, pp. 225–61 for a thorough discussion of the transformation of *kürek* punishment during the nineteenth century. Also see Zarinebaf, Chapter 9 for a discussion of the transformation of punishment in Istanbul during the eighteenth century.
26. Chapter 4 discusses the topic of prison labour.
27. A comprehensive study of the transformation and practice of Ottoman criminal law for the long nineteenth century has yet to be written, but the following section was culled from a number of secondary and primary sources that treat this topic in a cursory manner. The texts of the various Ottoman Penal Codes can be found in Akgündüz, *Mukayeseli İslam*, pp. 811–19 and 821–3; *Düstur, İkinci Tertip*, vol. I, pp. 400–68; and Bucknill and Utidjian, *Imperial Ottoman Penal Code*. Scholars who work on the legal history of the Middle East, par-

- ticularly the penal codes of the Ottoman Empire and Egypt, include Ahmet Akgündüz, Gabriel Baer, Serpil Bilbaşar, Ahmet Gökçen, Ruth Miller, and Rudolph Peters. Of particular importance is Miller's *Legislating Authority*. Her argument centres on 'looking at the discourse of law in and of itself – law as it was understood apart from its social context'. She claims that 'Ottoman and Turkish law was in fact detached from its social context'. This is what defines the transformation of criminal law in the late Ottoman Empire: its 'increasing abstraction' (pp. 1–2). Her argument goes through the promulgations of the various Ottoman penal codes and their transformation, but does not link them to the ways in which the law was implemented or practised.
28. This 1839 Imperial Decree called for 'guarantees to all Ottoman subjects of perfect security for life, honour, and property; a regular system of assessing taxation; and an equally regular system for the conscription of requisite troops and the duration of their service'. See Hurewitz, *Middle East and North Africa*, pp. 268–70. This decree, along with the *Islahat Fermanı* (discussed below), was the basis of Ottoman reform programmes during the Tanzimat. They declared that all Ottoman subjects, regardless of religious affiliation, communal identity, or socio-economic status, were equal before the law.
  29. Peters defines *siyaset* punishments as 'discretionary justice exercised by the head of state and executive officials, not restricted by the rules of the *shari'a*, whereas *ta'zir* are 'discretionary punishments' meted out by Islamic court judges and authorised by Islamic law in cases where the accused could not be convicted according to the stipulations of Islamic law, but who were obviously guilty. Thus, *ta'zir* punishments could not exceed *shari'* punishments. Both *siyaset* and *ta'zir* consisted of corporal punishments, such as flogging or amputation, and could also include fines. See Peters, *Crime and Punishment*, pp. 196 and 127–33; and Baer, pp. 147–8.
  30. Baer, pp. 139–58.
  31. Bucknill and Utidjian, pp. xii–xiii; and Peters, *Crime and Punishment*, pp. 127–33.
  32. Miller, pp. 25–40; and Darling, pp. 157–67.
  33. Miller, pp. 26–31.
  34. Peters, *Crime and Punishment*, pp. 127–33; and Baer, 'Transition from Traditional to Western', pp. 143–4.
  35. Peters, *Crime and Punishment*, pp. 127–33; and Bucknill and Utidjian, pp. xiii–xvi.
  36. Hurewitz, pp. 315–18; italics added.
  37. For a brief, but useful, discussion of the source and significance of the initial 1858 IOPC, see Baer, pp. 139–58; and Bucknill and Utidjian, pp. ix–xvi.
  38. Bozkurt, 'Reception of Western European Law', p. 287.
  39. Bucknill and Utidjian, p. 1.
  40. Baer, 'Transition from Traditional to Western', pp. 144–5.
  41. Rubin, *Nizamiye Courts*, pp. 1–54; and Peters, *Crime and Punishment*, p. 131.

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42. Rubin, *Nizamiye Courts*, pp. 1–54.
43. Bucknill and Utidjian reproduce the original 1858 IOPC and its subsequent changes in chronological order, thus enabling side-by-side comparison of all of the code's articles.
44. Bucknill and Utidjian, pp. 1–36.
45. *Ibid.*, pp. 37–123.
46. *Ibid.*, pp. 124–98.
47. *Ibid.*, pp. 199–208.
48. *Ibid.*, p. xiv.
49. *Ibid.*, pp. 10–13, 24–31, 33–5, 37–69, 76–7, 79–83, 86–92, 99–100, 102–4, 109–62, 164–83, and 192–208.
50. The fifty-six articles modified on 4 June 1911 include Articles 8, 11, 12, 37, 39, 40, 42, 45, 46, 47, 55, 67, 68, 69, 76, 99, 102, 105, 106, 113, 114, 115, 116, 130, 134, 135, 136, 155, 166, 170, 174, 175, 177, 178, 179, 180, 188, 189, 190, 191, 192, 197, 201, 202, 206, 213, 214, 220, 222, 224, 225, 226, 230, 252, 253, and 255.
51. According to Wael Hallaq and Rudolph Peters, Islamic law only has six *hudud* offences considered 'violations of the claims of God'. These offences consist of theft, banditry, unlawful sexual intercourse, unfounded accusation of unlawful sexual intercourse (slander), drinking alcohol, and apostasy. The Quran and books of Islamic jurisprudence (*fiqh*) delineate these offences and their prescribed punishments in great detail. They also make the procedural laws concerning these crimes so strict that their punishments were rarely applied. Islamic jurisprudence, however, stipulates wide-ranging provisions giving discretionary authority to various state actors (magistrates, rulers, and *qadis*) to mete out punishments (*ta'zir* and *siyaset*) 'for sinful or forbidden behaviour or . . . acts endangering public order or state security'. See Peters, *Crime and Punishment*, pp. 6–7 and 53–68; and Hallaq, *Introduction to Islamic Law*, pp. 72–82, 173.
52. Bucknill and Utidjian, pp. 149–70.
53. Hallaq, *Introduction to Islamic Law*, p. 173.
54. Bucknill and Utidjian, pp. 152–6.
55. *Ibid.*, pp. 159–62. Regarding *nizamiye* court procedural law and its differences from *shari'* procedural law, see Rubin, *Nizamiye Courts*, Chapter 1.
56. Bucknill and Utidjian, p. 166.
57. *Ibid.*, pp. 167–70.
58. For imperial crime statistics for 1910–11 see BOA, DHEUMTK 8/23, 8/28, and 32/3. For crimes committed by convicted criminals, see DHMBHPS 145/31, DHMBHPSM 3/36, 4/4, 4/21, 5/1, and 5/9.
59. Bucknill and Utidjian, pp. 171–90.
60. *Ibid.*, p. 174.
61. 'The jurists define the *hadd* crime of theft very narrowly. It contains the following elements: surreptitiously taking away of (movable) property with a certain minimum value (*niṣāb*) which is not partially owned by the perpetra-

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- tor nor entrusted to him from a place which is locked or under guard (*hırz*)' (Peters, *Crime and Punishment*, pp.55–7).
62. Bucknill and Utidjian, pp. 175–6.
  63. *Ibid.*, pp. 177–9.
  64. *Ibid.*, pp. 180–3.
  65. Concerning property rights in Islamic law, see Hallaq, *Shari'a*, pp.296–307.
  66. Berkes, *Development of Secularism*, pp. 161–72, 417, and 467–73; Karpas, *Politicization of Islam*, pp.421–2; and Peters, *Crime and Punishment*, pp. 127–33.
  67. Regarding CUP economic policies during the Second Constitutional Period, see Toprak, '*Milli İktisat*' 1908–1918, *İttihad-Terraki ve Cihan Harb*, and *Milli İktisat, milli burjuvazi*.
  68. BOA, DHEUMTK 8/23, 8/28, and 32/3, DHMBHPS 145/31, DHMBHPSM 3/36, 4/4, 4/21, 5/1, and 5/9.
  69. Bucknill and Utidjian, pp. 124–45.
  70. Peters, *Crime and Punishment*, p. 7.
  71. *Ibid.*, pp. 38–53.
  72. Bucknill and Utidjian, p. 125.
  73. *Ibid.*, pp. 133–5.
  74. *Ibid.*, pp. 127–8.
  75. *Ibid.*, pp. 128–9.
  76. *Ibid.*, p. 129.
  77. *Ibid.*, p. 131.
  78. Paz, pp. 20–1.