

described as "Islamic law" and "Islamic law" is a term which is used to describe the law of the Islamic world. The author of this book is a leading expert on Islamic law and has written several books on the subject. This book is a comprehensive study of Islamic law and is a valuable contribution to the field.

The book is written in a clear and concise style and is accessible to a wide range of readers. It is a valuable resource for students and scholars alike. The author's expertise is evident throughout the book and the reader is left with a clear understanding of the subject. This book is a must-read for anyone interested in Islamic law.

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— [Name obscured]

[Address obscured]

[City obscured]

Book Review

Structural Characteristics of Islamic Penal Law

By Hedeaki Homma. Niigata, Japan: International University of Japan, 1986, 104 pp. (Institute of Middle Eastern Studies, Working Paper Series No. 6).

This book, submitted initially as a master's thesis to the Institute of Middle Eastern Studies and then published as a working paper, consists

of four chapters and a conclusion. The first three chapters are devoted to discretionary (*ta'zīr*) and prescribed (*ḥadd*) punishments, as well as those for injury and murder. The last chapter discusses themes in the philosophy of punishment, their relevance to Islamic and western law and, to a lesser degree, provides comparisons with Japanese law. The two main objectives, as stated on the first page, are "to scrutinize the nature of the Islamic penal system and . . . investigate the possibility of applying it to the Islamic countries."

The author advances the theme that, in general, penalties in Islamic law are predicated on defending and safeguarding the interests of the Muslim community (i.e., the *ummah Islāmīyah*, as the author frequently calls it). As the family is its stable foundation, threats to its integrity (i.e., illicit sexual relations [*zinā*] and slanderous accusations [*qadhf*]) are punished severely to protect the community's morality (pp. 34, 38).

He says further that Islamic penal law has a dual structure. The first level consists of prescribed punishments (*ḥadd*), retaliation (*qiṣās*), and blood money (*diyāh*), while the second one is that of discretionary punishments (*ta'zīr*). The main purposes of the former are deterrence and personal retribution, whereas those for the latter are more versatile, as they cover all transgressions and can be applied as additions or alternatives to first-level punishments.

Homma characterizes Islamic penal law by its diversity of punishments, especially in the area of *ta'zīr*, which responds best to demands for reform and "fulfills its important function as guardian of Islamic justice from all angles" (p. 80). While imprisonment is the dominant western form of legal punishment, Muslim jurists do not consider it as effective as corporal punishment for an individual's reform (p. 23). But, he adds, all punishment in itself constitutes an evil in Islamic law, a fact that can be seen clearly with regard to the more severe prescribed punishments, which are restricted both in number and in the higher standards of proof required for their subsequent enforcement (p. 81). The author lists six actions for which a specific punishment is prescribed: adultery, false accusation, theft, highway robbery, wine drinking, and apostasy (p. 4). However, he fails to mention variant positions taken by such scholars as Muṣṭafā Aḥmad al Zarqā (*Al Madkhal al Fiqhī al 'Amm*, vol. I, p. 50) and Yūṣuf al Qaraḏāwī (*Sharī'at al Islām Sāliḥah li al Taṭbīq fī Kull Zamān wa Makān*, p. 122). These two scholars claim that there are only four or five actions (i.e., deleting wine drinking and apostasy from the list) necessitating a prescribed punishment, based on the fact that the Qur'an does not prescribe a particular punishment for these offenses.

As for his second theme, Homma states that the applied penal law of Muslim countries is a compound of Islamic and western systems in which the latter is the more dominant. The introduction of western law into the Muslim world was considered indispensable for its modernization: "How-

ever Western law has not reduced the number of criminals or enhanced the standard of living" (p. 2). Western law is largely reflective of European history, religion, and culture and differs widely from Islamic law. Thus it is only natural for Islamic countries to try to establish their own legal system, as it is the one best suited to their culture, history, and Islam, "because the legal system of European countries is not superior to the Islamic one." Having said this, Homma adds, correctly, that the revival of Islamic penal law must be espoused with the revival of independent inquiry and *ijtihād*, for the legal opinions of thirteenth-century Muslim jurists cannot be applied to modern society. Moreover, Muslim jurists must be independent of "mundane authority," and there must be a concrete and fixed standard for *mujtahids* as well as a procedure to resolve possible disputes among them (p. 17).

The author places considerable emphasis on the traditional mode of *ijtihād* by individual jurists. In this context, he discusses the philosophy and purpose (*ḥikmah*) of the revealed law in contradistinction to the more technical concept of effective cause ('illah). *Ḥikmah* is highly conceptual, and *ijtihād* formulated on its basis could well be "independent of the strict literal meaning of the revelation." Strict rules may be modified, but the law's basic purpose must be upheld (pp. 90-91). Without mentioning al Shāṭibī, who is renowned for his more philosophical approach to an understanding of the Shari'ah's objectives (*maqāṣid*), Homma seems to have adopted essentially the same approach. Such recent works as Khalid Masud's *Islamic Legal Philosophy* and Aḥmad al Raysūnī's *Nazarīyat al Maqāṣid 'ind al Imām al Shāṭibī* offer a fuller treatment of the same general theme. By emphasizing individualized *ijtihād*, Homma shows that he is unaware of the tendency of Muslim scholars, in recent decades, to move away from individual *ijtihād* and towards collective *ijtihād*, which is broadly based and draws upon the combined expertise of Shari'ah specialists as well as those in other disciplines.

Homma asserts that, in Islam, law and religion are so inseparable that "to separate law from religion is to negate Islam . . . there is no borderline between law and morals" (pp. 3, 6, and *passim*). These categorical statements do not take into account certain aspects of Islamic law that are premised on the very separation of law and religion as well as of morality and law. Note, for example, the moral categories of discouraged (*mandūb*) and hated (*makrūh*) in contradistinction to the legal categories of obligatory (*wājib*) and prohibited (*ḥarām*), or the generally acknowledged distinction between religious obligations (*wājib dīnī*) and juridical obligations (*wājib qaḍā'ī*). I have discussed this issue at length in my "An Analysis of *Ḥaqq* in Islamic Law," *AJISS* 10, no. 3 (Fall 1993).

I also find Homma's categorical statement that "no one has legislative authority" in Islamic law to be somewhat less than accurate. The doctrines of *siyāsah shar'īyah* (a Shari'ah-oriented policy) and *istiṣlāḥ* (con-

sideration of public interest), for instance, entitle the lawful authority (the *ulū al amr*) to take all necessary measures, including legislation, to secure the community's benefit or to protect the people against a manifest harm (for further detail, see my article "Siyāsah Shar'īyah or the Policies of Islamic Government," *AJISS* 6, no. 1 [September 1989]).

Although the book is well written and concise, it suffers from weaknesses in documentation and reliance on secondary sources. But even so, Homma's research is premised on sound and reasonable objectives and offers a balanced and impartial treatment of its subject. The author has undoubtedly made a distinctive contribution to the advancement of a perspective and framework for the future of Islamic penal law.

Mohammad H. Kamali

College of Laws

International Islamic University
Selangor, Darul Ehsan, Malaysia