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Rudolph Peters, Shariʿa, Justice and Legal Order, Leiden and Boston, MA: Brill, 2020, 704 pp.

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Öz

Rudolph Peters'ın uzun yıllara dayalı çalışmasının ürünü olan kitap, yazarın Mısır ve İslam hukuk tarihine özellikle de hukuk Düzeni ve hukukun Uygulanmasına hasredilmiş makalelerinden oluşmaktadır. Yazarın yarım asra baliğ çalışmalarının ürünü olan kitapla ilgili pek çok kritik yazısı yazılmıştır. Bu yüzden ben burada kitabın genel bir tanıtımını yapmak yerine yazarın gözünden kaçan bazı noktalara odaklanacağım. Yazara göre İslam hukuku modern insan hakları çerçevesinde değerlendirildiğinde yetersiz kalır. O, İslam hukukunun evrensel olmadığını ve İslam hukukunda eşitliğin olmadığını savunur. Çünkü yazara göre İslam hukukunun uygulanma alanı İslam ülkesi ile sınırlıdır. İslam ülkesinin dışındaki müslümanlar suç işleseler de İslam ülkesine döndüklerinde cezalandırılmazlar. İslam hukuku, İslam ülkesinin dışındaki gayri müslimleri düşman olarak tanımladığı için onların canları ve malları hukuki koruma altında değildir. Bunun istisnaları olsa da istisnai korumaların ihlali durumunda kısas ya da diyet gerekli olmamaktadır. Konuya ilişkin olarak yazarın ortaya koyduğu bu yaklaşım, fukahanın bakış açısıyla uyumlu değildir. Fakihler, ülkeyi iki kısım içerisinde değerlendirmişlerdir ve İslami kurallara dayalı olarak yönetilen ülkeyi darülislam olarak nitelemeişlerdir. Bu ayrıma göre diğer ülkeler darülharp adını almaktadır. Bu, darülislamın dışındaki yerleri ifade etmek üzere kullanılan ve günümüzdeki tabirle yabancı ülkenin karşılığı olarak kullanılmaktadır. Fakihlerin çoğunluğuna göre haramın darülislamda ya da darülharbde işlenmesi arasında bir farklılık yoktur. Sadece hanefiler islam ülkesi dışında

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işlenen suçların cezalandırılmasının mümkün olmadığına değinmişlerdir. Hanefilerin ifadesi de islam ülkelerinin dışında haramların helal olduğu anlamına gelmez. Adam öldürme, hırsızlık, zina ve içki gibi haramlar; İslam ülkesinin dışında da haram olmaya devam etmektedirler. Bu ve buna benzer pek çok konuda yazarın ortaya koydukları, üzerinde durulmayı ve cevaplandırılmayı hak etmektedir.
Anahtar Kelimeler: Şeriat, Adalet, Hukuk, İslam Hukuku, İnsan Hakları.

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Abstract

The book, which is the product of Rudolph Peters's long years of work, selected articles he wrote on the history of Egyptian and Islamic law, especially on the legal order and the actual application of the law. Many reviews have been written about this book, which is the fruit of nearly half-century research. So I will evaluate some points the author overlooked.

Rudolph Peters starts by arguing that Islamic law is insufficient within the framework of modern human rights. He states clearly: Islamic law is not universal. There is no equality in Islamic law. Expressing that Islamic law is not universal, the author limits the application area of this law to the Islamic country. According to him, Muslims who leave the Islamic territories are not subject to sharia, and even if they commit a crime there, they will not be penalized when they return. Islamic law identified non-Muslims outside the Islamic country as enemies. So their lives and property are not under legal protection. While there are exceptions to this, the violation of protections does not entail retaliation or blood money.

However, there seemed to be a fundamental disagreement over the problem between Rudolph Peters and Islamic law scholars. They divided the countries into two parts and defined the country based on Islamic principles as an Islamic country. According to this definition, other countries are an abode of war. It used to refer to countries outside the Islamic country - in today's terms - foreign countries. Muslims outside the Islamic country are also subject to the rules of Islamic law. Islamic law scholars said there is no distinction between being inside or outside the Islamic country in terms of the punishment for the crime committed. Only the Hanafis have argued that no penalty for crimes committed outside the Islamic country since there is no possibility of penalization. The absence of it outside the Islamic country does not mean crime is permissible. Acts such as murder, theft, adultery, and drinking alcohol committed outside the Islamic country are also prohibited.

Rudolph Peters argues that the non-Muslims in an Islamic country have the protection of life and property. However, their legal capacity is limited. What RP expresses here is that non-muslims cannot hold public office. According to him, they cannot be the guardians of Muslims. However, there is a sharp disagreement over their legal capacity between RP and ıslamic law scholars. They point to the desire for an Islamic country in which citizens treat each other as equals. Most of the restrictions existing in social life aim to protect their interests. The most important example of this is the non-Muslims wearing their unique clothes. It is an error to consider this regulation as evidence of restriction of legal capacity. The measure was taken partly as a precaution to determine identity in middle age. There was no means to determine identity -like an identity card. Moreover, most people know that non-Muslim community leaders have made a supreme effort to preserve their traditional clothes.
Keywords: Sharia, Justice, Legal Order, Islamic Law, Human Rights.

The book is well organized, with an introduction followed by two sections, most of which are selected articles that Rudolph Peters wrote on the history of Egyptian and Islamic law, especially on the legal order and the actual application of the law. Peters' articles span 40 years of research and writing, covering topics from the development of early Islamic law to contemporary jihadism. However, there were also points that the author missed in his works that spread over such a wide area. Peters argues that Islamic law is insufficient within the framework of modern human rights. There is no equality in Islamic law. Expressing that Islamic law is not universal, the author limits its application to Islamic countries. According to Peters, Muslims who leave Islamic territories are not subject to *shariʿa* law, and even if they commit a crime there, they will not be penalized when they return. Islamic law identified non-Muslims outside the Islamic country as enemies. Therefore, their lives and property are not under legal protection. Although there are exceptions, the violation of protections does not entail retaliation or blood money.

However, there was a fundamental disagreement between Peters and Islamic law scholars over the problem. Islamic law scholars said that there is no distinction between being inside or outside the Islamic country in terms of the punishment for the crime committed. Although the phrase abode of war (dar al-harb) at first glance means ‘‘the country with which there is a state of war between the abode of Islam" (dar al-Islam), it is used in Islamic law sources to mean ‘‘countries outside dar al-Islam" and as the equivalent of today's term ‘‘foreign country." Therefore, the claim that Muslims are in a constant state of war against non-Muslims and that the distinction and naming in question stem from this does not reflect the truth. Contrary to the author's claim,

Muslims who attend dar al-harb are also subject to shariʿa. Islamic law scholars have put forward different opinions about the effect of territorial separation on the provisions and whether some provisions will change accordingly in the abode of war (dar al-harb). According to Hanafis, criminal law does not apply to crimes committed by Muslims in dar al-harb. According to the other three sects, there is no difference between dar al-Islam and dar al-harb. However, the fact that Hanafis does not apply punishment does not mean that the criminal act is permissible. Although acts such as murder, theft, adultery, and drinking are forbidden worldwide, there is no point or benefit in punishing the crime committed since the state cannot impose punishment when it is committed outside the borders of sovereignty.

Peters argues that non-Muslims in an Islamic country have protection of life and property. However, their legal capacity is limited. Peters expresses here that non-Muslims cannot hold public office. According to Peters, non-Muslims cannot be the guardians of Muslims. However, there should be more clarity between Peters and Islamic law scholars regarding their legal capacity. Islamic law scholars point to the desire for an Islamic country where citizens treat each other as equals. Most restrictions existing in social life protect their interests. The most important example of this is non-Muslims wearing unique clothes. It is an error to consider this regulation as evidence of a restriction on legal capacity. The measure was taken partly as a precaution to determine identity in the Middle Ages. There was no means to determine identity—like an identity card. Moreover, most people know that non-Muslim community leaders have made a supreme effort to preserve their traditional clothes. Non-Muslims' style of clothing had a favorable outcome for preserving their culture within Islamic society.

Peters argues that non-Muslim citizens cannot serve as public officers in Muslim societies. However, there are many examples in which we should reject this approach. For instance, the first caliph of the Umayyad state, Mua'wiya, appointed many non-Muslim citizens as public officers, and other caliphs continued this trend. Similarly, some Christian statesmen advanced to the position of vizier in the Abbasid state. On the other hand Greek and Armenian diplomats occupied influential positions in Ottoman foreign affairs.

For Peters, a value recently adopted in the Islamic world is the principle of freedom of religion. Peters argues that this principle is incompatible with the classical Islamic doctrine of apostasy, which states that a Muslim is unable to change his religion. However, it is also a mistake to overlook some differences. In the classical period, not only in Muslim societies but also in other societies, conversion was not considered within the scope of religious freedom but within the scope of state security. Therefore,

scholars evaluated the apostasy of a man who can fight as a rebellion against the state. Therefore, women and the elderly population do not face similar sanctions if they apostatize. Peters states that Islamic law does not recognize the natural equality of all people before the law. There are several categories of people. People's legal capacities are different from each other. Legal personality in Islamic law is defined by three dichotomies that create legal boundaries between dominant and nondominant groups: Muslims vis-à-vis non-Muslims, men vis-à-vis women, and free people vis-à-vis enslaved people. An obvious example of the existence of these categories is the differentiation of blood money. The highest amount must be paid for a free Muslim man, whereas there is no blood money for non-Muslims residing in the enemy country. However, there is a marked contrast between Peters' approach and the Quranic ruling. The Qur'an strongly emphasizes the principle of equality for all humankind and says, "O mankind, indeed, We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the noblest of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted" (Q. 49:13). From this point of view, blood money is not only a punishment but also compensation for the loss suffered. As a result, killing the free man caused an immense financial loss to the family. This led to very high compensation. This model is similar to the one that the Law of Compensation already applies to employees. In addition, there is nothing to indicate that Islamic law does not recognize the natural equality of all people before the law.