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Judicial Reforms, Sharia Law, and the Death Penalty in the Late Ottoman Empire

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ABSTRACT: There is a general consensus among Ottomanists that capital punishment became a rare occurrence in the Ottoman Empire from the 1840s onwards. This paper argues that two structural aspects of the reformed criminal justice system functioned as constraints on the imposition of the death penalty in the late Ottoman Empire. The first concerns the Tanzimat state's particular attention to the principle of legality and procedural correctness with regard to criminal prosecution and sentencing. These principles, together with a centralized judicial review procedure, deprived local authorities of discretionary punishment powers that left them little leeway to administer the law on their own. This resulted in the circumscribed use of summary executions and death sentences for crimes against the state. The second aspect concerns the merging of Islamic criminal law, particularly Hanafi doctrines, with state-enacted penal codes, and, in parallel, the dual trial procedure carried out in crimes committed against individuals, i.e., homicide. Drawing on archival sources as well as distinct viewpoints harbored by the Ottoman elites, this article contends that the mingling of two spheres of jurisdiction extensively restricted the power of the judicial councils/*Nizamiye* courts to pass death sentences for acts of premeditated murder.

Introduction

From the mid-eighteenth until the end of the nineteenth century, the death penalty was a subject of contentious debate in Europe. From Montesquieu and Voltaire to Beccaria and Bentham, prominent jurists and thinkers either denounced capital punishment or advocated its selective use for only the most heinous crimes. The pioneers of penal reform also argued for the obviation of pain in the implementation of death sentences, and called for the withdrawal of executions from the public space. They favored concealing the judicial practice behind prison walls, on the grounds that the spectacle of death had a depraving effect on public and private morality (insofar as it was contrary to