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# KEEPING THE STATE OUT: THE SEPARATION OF LAW AND STATE IN CLASSICAL ISLAMIC LAW

Lubna A. Alam\*

CRIME AND PUNISHMENT IN ISLAMIC LAW: THEORY AND PRACTICE FROM THE SIXTEENTH TO THE TWENTY-FIRST CENTURY. By *Rudolph Peters*. Cambridge and New York: Cambridge University Press. 2005. Pp. xi, 219. \$70.

## INTRODUCTION

The implementation and enforcement of Islamic law, especially Islamic criminal law, by modern-day Muslim nation-states is fraught with controversy and challenges. In Pakistan, the documented problems and failures of the country's attempt to codify Islamic law on extramarital sexual relations<sup>1</sup> have led to efforts to remove rape cases from Islamic law courts to civil law courts.<sup>2</sup> In striking contrast to Pakistan's experience, the Republic of the Maldives recently commissioned a draft of a penal law and sentencing guidelines based on Islamic law that abides by international norms.<sup>3</sup> The incorporation of Islamic law into the legal systems of various countries around the world makes understanding Islamic criminal law especially important.

In *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*, Rudolph Peters<sup>4</sup> presents a thorough survey of Islamic law from the Ottoman period to today. He situates the reader by first discussing classical Islamic-law doctrines regarding crime, evidence, punishment, and the principles underlying criminal law. After providing a doctrinal foundation, he examines how the doctrine was and is actually used in practice. Since the enforcement and practice of criminal law has varied greatly in the Muslim world from region to region and from time

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1. See generally Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective*, 18 MICH. J. INT'L L. 287 (1997).

2. BBC News, Pakistan votes to amend rape laws (Nov. 15, 2006), [http://news.bbc.co.uk/2/hi/south\\_asia/6148590.stm](http://news.bbc.co.uk/2/hi/south_asia/6148590.stm).

3. Paul H. Robinson, et al., Codifying Shari'a: International Norms, Legality & the Freedom to Invent New Forms (Univ. of Penn. Law School, Public Law Working Paper No. 06-26, 2006), available at <http://ssrn.com/abstract=941443>.

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to time, Peters focuses his study on examining the practice in one specific state—the Ottoman Empire (p. 3). He then discusses the wave of modernization of criminal law that began in the mid-nineteenth century, usually with the onset of colonialism. Peters concludes by examining Islamic criminal law today, and especially its resurgence in various countries around the world (p. 2).

In his examination of classical doctrine and its implementation in the Ottoman Empire, Peters shows the complexity of the Islamic legal system and its doctrine. He points out that the physical punishments often associated with Islamic law in the popular imagination (amputation, stoning, etc.) were rarely applied (pp. 92–93, 100). One aspect of the Islamic system that Peters does not discuss in depth, however, is the overall relationship between the law and the state in the classical system; during the Ottoman era this relationship underwent significant changes causing reverberations still being felt in the present day. This Notice examines the changing relationship between Islamic law and the state, and its political implications for today. Part I analyzes Peters' arguments about criminal law in the Ottoman Empire. Part II examines the classical relationship in which the formulation of the law remained outside the province of the state, and contrasts the classical period with the changes that took place under the Ottoman Empire. Finally, Part III considers possible modern-day implications of both the classical and Ottoman systems.

### I. PETERS' ANALYSIS OF ISLAMIC CRIMINAL LAW

Peters demonstrates how the legal discourse of Islamic legal scholars related to and was applied by courts (p. 2). Unlike many works, which focus solely on theory and doctrine, he examines how Islamic criminal law “was actually used in criminal law enforcement,” (p. 3) and provides a study of both the theory and practice of Islamic criminal law in one book. He chooses to focus on the Ottoman Empire to examine criminal law in practice because of the extensive documentation of the legal system and the large amount of pre-existing research on those records and documents (p. 3). As Peters notes, Islamic law under the Ottoman Empire underwent significant changes that led to “the transformation of . . . legal discourse into a body of unambiguous and consistent legal rules and the creation of enacted laws (*qanun*), supplementing the Shari'a,” (p. 70). Under the Ottoman Empire, the state dictated scholarly views for the courts to follow, and “judgments passed according to . . . other views would be null and void and would not be enforceable” (p. 71).

While Peters admits that the Ottoman system is not representative of Islamic law generally and that the Ottoman Empire ushered in changes to the Islamic legal system, he neither demonstrates nor explains the significance of these changes and how they worked. While classical Islamic doctrine was varied and diverse, the Ottoman state laid down which legal opinion the courts had to follow. For instance, jurists did not all agree on whether a statute of limitations on prosecutions existed or not, and only one school of law,

Hanafi, mentioned a statute of limitations at all (p. 11). For the Hanafis, while most *hadd* crimes<sup>5</sup> could not be punished more than a month after their occurrence, the crime of *qadhf*, unfounded allegation of unlawful sexual intercourse, was not subject to any statute of limitations as it was seen to “violate[] both claims of God and claims of men and that the latter are not subject to extinction by the passage of time” (p. 11). The Ottoman Empire, on the other hand, enacted a fifteen-year statute of limitations on all crimes, including *qadhf*. This seemingly minor difference between classical Islamic doctrine and actual Ottoman practice exposes the wide shift that occurred in Islamic law during the Ottoman period. The Ottomans’ changes to the practice of Islamic law put them outside the classical era of Islamic law, and “in the minds of most Muslims the Ottomans are simply not sufficiently representative of the classical tradition, the real fountainhead of inspiration from which modern Islam draws its force.”<sup>6</sup> An understanding of the changes that took place between the classical period of Islamic law and the Ottoman era is essential to comprehending the debates surrounding Islamic criminal law today.<sup>7</sup>

## II. STATE AND LAW DURING THE CLASSICAL PERIOD AND THE OTTOMAN EMPIRE

This Part examines Islamic law during the classical period and how the Ottoman era differed from it. Section A considers the classical period: it will discuss how Islamic law developed in tension with the state, rather than via the state. Section B traces the fundamental changes that occurred during the Ottoman Empire, particularly with respect to criminal law.

### A. Classical Period

The classical era of Islamic history, which ended at the beginning of the sixteenth century,<sup>8</sup> saw the rise of Islamic states as well as the formation of a complex system of Islamic law.<sup>9</sup> From its very beginnings, the content of

5. A handful of crimes and their accompanying punishments that are specifically mentioned in the Qur’an, such as highway robbery, adultery, and homicide. JOSEPH SCHACHT, *AN INTRODUCTION TO ISLAMIC LAW* 175 (1964).

6. SHERMAN A. JACKSON, *ISLAMIC LAW AND THE STATE: THE CONSTITUTIONAL JURISPRUDENCE OF SHIHAB AL-DIN AL-QARAFI*, at xviii–xix (1996).

7. My analysis is limited to the Sunni tradition of Islamic law and does not discuss the Shiite tradition.

8. KNUT VIKÓR, *BETWEEN GOD AND THE SULTAN: A HISTORY OF ISLAMIC LAW* 186 (2005). While various starting dates have been given for the beginning of the classical period, for simplicity’s sake, I will define the classical period as having started upon the death of the Prophet Muhammad in 632 C.E.

9. While Islamic law is often referred to as *sharia*, the more appropriate term is *fiqh*. *Sharia* consists of rules and commands originating from God, while *fiqh* is the human attempt to understand and translate these rules in the worldly context. *Fiqh* is the human attempt to ascertain *sharia*; thus, Islamic law in both doctrine and practice is more appropriately labeled *fiqh*. See IMRAN AHSAN KHAN NYAZEE, *ISLAMIC JURISPRUDENCE* 24 (2000). Since, however, *sharia* is the term that is most

Islamic law developed largely free from political influence and pressure.<sup>10</sup> The system of Islamic law arose from a concerted effort on the part of pious individuals to ascertain the divine will of God.<sup>11</sup> These individuals were driven by religious commitment and, over time, a class of legal specialists and scholars arose out of specialized circles of learning.<sup>12</sup> Nearly 100 years after the Prophet Muhammad's death, by 730 C.E., individuals with greater knowledge and learning became more influential than the uneducated; through sheer knowledge alone, these scholars challenged the legal authority of the state by putting themselves forth as the articulators of the law.<sup>13</sup> Until the eighth century, the main representatives of the legal system were proto-*qadis* (*qadi* meaning judge), civil servants who performed multiple functions, such as tax collecting and policing along with settling legal disputes. Even in this early era, before the rise of legal specialists, the state made no effort to control or promulgate the law: the state did not dictate rules of decision to these proto-*qadis*, and, instead, these individuals relied on customary practices, common sense, and their understanding of Islam to settle legal disputes.<sup>14</sup>

After the eighth century, a private legal-specialist class emerged, as did a clear division between it and the ruling elite<sup>15</sup>—this distinction between power and legal authority continued as the Islamic legal system developed. By the ninth century, the legal scholars developed a comprehensive theory and methodology of legal interpretation.<sup>16</sup> This methodology used as its primary sources the Qur'an, Sunna (normative practices of the Prophet Muhammad), and *ijma* (the unanimous consensus of the scholars) with *qiyas* (analogy) as the main mechanism of extending the law to address unforeseen circumstances.<sup>17</sup> Legal scholars organized into interpretive communities called *madhhabs*, or schools of law, which, by the end of the tenth century, became the "exclusive repository of legal authority. From this point on, all interpretive activity, if it was to be sanctioned and recognized as authoritative or 'orthodox,' [had] to take place within the boundaries and under the auspices of a recognized school of law."<sup>18</sup> While many *madhhabs*

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associated with Islamic law in the West, and is the term used by Peters in his book, this Notice will rely on that term.

10. WAEL B. HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* 165 (2005).

11. SAMI ZUBAIDA, *LAW AND POWER IN THE ISLAMIC WORLD* 10 (2003). Islamic law consists of both religious practices (such as prayer, almsgiving, pilgrimage, etc.) and practices seen as more obviously legal such as civil and criminal matters. This Notice does not deal with religious practices and focuses solely on the latter area.

12. HALLAQ, *supra* note 10, at 63.

13. *Id.* at 77.

14. *Id.* at 178–79.

15. *Id.* at 180.

16. Sherman A. Jackson, *Jihad and the Modern World*, 7 J. ISLAMIC L. & CULTURE 1 (2002).

17. Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origin and Elements*, in UNDERSTANDING ISLAMIC LAW: FROM CLASSICAL TO CONTEMPORARY 5–6 (Hisham M. Ramadan ed., 2006).

18. Jackson, *supra* note 16, at 3.

initially developed, only four remained by the end of the eleventh century. Those were the Hanafi, Shafi'i, Maliki, and Hanbali schools, all of which were equally orthodox and authoritative.<sup>19</sup>

Islamic law developed as a fundamentally *epistemic* system: legal authority was based in knowledge and learning and not in power, politics, society, or religion.<sup>20</sup> Since it was mastery over the law that led to authority, legal authority was private, personal, and resided in individual scholars and their interpretive communities (*madhhabs*), not in political rulers or the state.<sup>21</sup> While in other civilizations, including those in the West, the state legislated and executed the law, in Islamic civilizations the state had no part in legal governance or in creating and promulgating the law; a non-political system of authority created it.<sup>22</sup> Overall, Islamic law "represents an extreme case of a 'jurists' law"; it was created and developed by private specialists; legal science and not the state plays the part of a legislator, and scholarly handbooks have the force of law."<sup>23</sup>

This is not to say, however, that the Islamic state played no role. While it did not formulate the law, the state did appoint *qadis* (judges) to put the law into effect.<sup>24</sup> Thus, law remained independent from the state, but the courts were not independent and under the classical system: "the Shari'a court [was] . . . an apparatus of the state, but based on a law that [was] outside the state's domain."<sup>25</sup> And while the *qadi* was the state's representative in the justice system,<sup>26</sup> the ruler could not interfere in the judicial process by altering decisions or redirecting cases.<sup>27</sup> Thus, a basic separation of powers emerged between the state and the scholars.<sup>28</sup>

The epistemic grounding of legal authority meant that the ruling elite needed to legitimate their rule through association with legal scholars.<sup>29</sup> To that end, rulers appointed legal scholars as *qadis* in the courts, but these appointments were not contingent upon the scholar wanting to serve.<sup>30</sup> Starting around the eighth century and continuing until the eighteenth century, being appointed a *qadi* was considered a calamity for a legal scholar.<sup>31</sup> After all,

19. *Id.*

20. HALLAQ, *supra* note 10.

21. *Id.*

22. *Id.* at 166.

23. SCHACHT, *supra* note 5,

24. VIKÓR, *supra* note 8, at 185–87.

25. *Id.* at 187.

26. M. Isabel Calero Secall, *Rulers and Qadis: Their Relationship During the Nasrid Kingdom*, 7 ISLAMIC L. & SOC'Y 235, 235 (2000).

27. HALLAQ, *supra* note 10, at 83.

28. ZUBAIDA, *supra* note 11, at 43.

29. HALLAQ, *supra* note 10, at 184.

30. *Id.* at 83.

31. *Id.* at 180.

the Islamic legal system developed “in conscious opposition” to the state<sup>32</sup> and most legal scholars saw government and political power as a source of vice.<sup>33</sup> While the legal scholars were governed by ethics of piety and learning, the state and governing elite were defined by power, luxury, and a life increasingly apart from the everyday person.<sup>34</sup> Many saw the state as a source of oppression and illegality,<sup>35</sup> not surprising in light of the ninth century state-sponsored inquisition against certain schools of scholars.<sup>36</sup> Islamic history is replete with stories of scholars crying (along with their families) upon hearing of their appointments to a judgeship. The jurist Abu Qilaba al-Jarmi (d. 722 or 723) left Basra after hearing of his appointment, and Abu Hanifa (the eponym of the Hanafi *madhhab*) was imprisoned and flogged for his continual refusal to serve.<sup>37</sup> When the ruler asked Ali (b. ‘Abd Allah al-Muzani in 724) about his refusal to serve as a judge, he claimed ignorance of the law. When that excuse was rejected, al-Muzani said that if he were telling the truth, it would be wrong to appoint an ignorant person to be a judge, and, if he were lying, it would be just as wrong to appoint a liar!<sup>38</sup>

In addition to the court system staffed by legal scholars applying Islamic law, there were other parallel court systems, such as the *mazalim* (grievances) tribunals, that allowed the ruler, in his sovereign capacity, to address wrongs suffered by his subjects.<sup>39</sup> These tribunals generally dealt with complaints against state officials for offenses such as excessive taxation.<sup>40</sup> Overall, however, the legal system of the classical Muslim world remained that of Islamic law.<sup>41</sup> Under this system, the caliph and state had no legislative authority and legal authority was vested in four equally orthodox and valid *madhhabs*.<sup>42</sup> Since the state did not mandate or direct the law, a diversity of viewpoints and opinions were legitimated as valid, as the four schools of law differed with one another on various legal points and scholars within each school differed as well.<sup>43</sup> This diversity made a difference in the lives of everyday citizens; in areas where multiple *madhhabs* had adherents,

32. Jackson, *supra* note 16.

33. HALLAQ, *supra* note 10, at 180.

34. *Id.*

35. VIKØR, *supra* note 8, at 188.

36. ZUBAIDA, *supra* note 11, at 80, 85–86. The *mihna*, or inquisition, was instigated by the Abbasid caliph Ma’mun during the ninth century. He demanded that all the scholars subscribe to his rationalist doctrines, and many scholars, including the eponym of the Hanbali school, Ibn Hanbal, refused and were subsequently imprisoned. *Id.*

37. HALLAQ, *supra* note 10, at 181.

38. *Id.*

39. ZUBAIDA, *supra* note 11, at 51–52.

40. *Id.* at 54.

41. See Jackson, *supra* note 16, at 4.

42. HALLAQ, *supra* note 10, at 204; Jackson, *supra* note 16, at 3.

43. Sherman A. Jackson, *Shari’ah, Democracy, and the Modern Nation-State: Some Reflections on Islam, Popular Rule, and Pluralism*, 27 FORDHAM INT’L L.J. 88, 106 (2003).

the state would usually appoint judges from each of the four schools<sup>44</sup> and the defendant had the right to pick the court in which his case would be heard. This gave the defendant the ability to pick a judge whose views of law would be most favorable to his case. Litigants would ask legal scholars for nonbinding advisory legal opinions (*fatwas*) on their cases, which the *qadis* would carefully consider before issuing judicial decisions; consultation with outside legal experts was especially encouraged in cases possibly involving the death penalty.<sup>45</sup> Many times, both sides would consult with legal scholars to receive advisory opinions, and sometimes this would escalate into a battle of the experts—each side trying to find a legal expert and advisory opinion that would sway the *qadi* to rule in their favor.<sup>46</sup> Since the state did not legislate or mandate the law, a diversity of views among the schools thrived and was seen as a gift from God.<sup>47</sup>

### B. The Ottoman Empire

During the Ottoman Empire many fundamental changes took place in the relationship between the state and the law. Specifically, the state took control of the law through a process of centralization and unification of the *sharia*. Peters, in his discussion of the practice of criminal law during the Ottoman Empire, explains how the Ottomans transformed the diverse and variegated Islamic legal discourse into unambiguous and consistent legal rules while also legislating laws (*qanun*) to supplement *sharia* (pp. 70–75). The Ottomans selected the Hanafite school as the official school for the empire and then directed the *qadis* on which of the opinions in the Hanafi school to follow (generally the prevailing view within the Hanafi school) (p. 71). This choice was influenced by the Hanafi's well established presence in the area and its clear criteria for determining the most authoritative views within the school (p. 71). While Peters argues that the *qanun* provisions merely supplemented *sharia* (p. 74), other scholars argue that in actual practice the *qanun* provisions dominated and preempted *sharia*.<sup>48</sup> Interestingly, these newly enacted *qanun* included provisions covering criminal law, an area in which the *sharia* had no practical importance.<sup>49</sup> As Peters points out, evidentiary and procedural rules in Islamic criminal law were very strict (pp. 12–19), thus making it extremely difficult to punish many criminal offenses adequately.<sup>50</sup> The new *qanun* rectified these shortcomings by setting

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44. See VIKÓR, *supra* note 8, at 169–70.

45. Muhammad Khalid Masud, Brinkley Messick & David S. Powers, *Muftis, Fatwas, and Islamic Legal Interpretation*, in ISLAMIC LEGAL INTERPRETATION: MUFTIS AND THEIR FATWAS 3, 10 (Muhammad Khalid Masud, Brinkley Messick & David S. Powers eds., 1996).

46. See, e.g., BERNARD G. WEISS, *THE SPIRIT OF ISLAMIC LAW* 137–39 (1998).

47. N.J. COULSON, *A HISTORY OF ISLAMIC LAW* 102 (1964); VIKÓR, *supra* note 8, at 73.

48. VIKÓR, *supra* note 8, at 208; ZUBAIDA, *supra* note 11, at 113.

49. ZUBAIDA, *supra* note 11, at 112; see also DAVID F. FORTE, *STUDIES IN ISLAMIC LAW: CLASSICAL AND CONTEMPORARY APPLICATION* 80 (1999).

50. ZUBAIDA, *supra* note 11, at 112.

lower evidentiary thresholds and setting various punishments for different crimes.

Under this new organization of the law, *qadis* in the Ottoman Empire judged cases according to *sharia* as well as *qanun*.<sup>51</sup> Unlike classical Islamic law where legal authority was epistemically grounded, the authority of the *qanun* were solely based on the raw power of the state to issue the law.<sup>52</sup> The diversity of equally authoritative viewpoints gave way to a unitary and systematic body of law, more akin to a law code.<sup>53</sup> A dramatic change in the relationship between state power, and the law took place during the Ottoman period, where legal authority shifted away from non-state, independent legal scholars and the *madhhab*, to the hands of the state. This change later facilitated efforts to modernize and westernize the law and, even later, to re-Islamize the law.

### III. MODERN-DAY IMPLICATIONS OF THE RELATIONSHIP BETWEEN ISLAMIC LAW AND THE STATE

In the modern era, state power is paramount over all spheres of society, including the law; this hegemony has special import for the Muslim world. Various political movements in the Muslim world focus on the political application of *sharia*—these movements see the application of *sharia* as a solution to the various ills plaguing society.<sup>54</sup> After the advent of colonialism, legal codes modeled after Western law replaced *sharia* in most of the Muslim world (p. 2). Yet despite its displacement as an applied law, Islamic law continues to have authority and legitimacy for most Muslims;<sup>55</sup> political movements draw on this legacy to gain legitimacy in Muslim populations. The drive to have governments apply Islamic law is rooted in a variety of reasons—ideological, political, cultural, and nostalgic. And while the call to re-implement Islamic law emanates from various political movements, each with their own individual ideologies and goals, one thing remains the same: these calls to implement *sharia* presuppose and assume that the mechanism of implementing *sharia* will be through the modern nation-state, meaning that the state will create, enforce, and apply Islamic law. In the countries where the movement to re-introduce Islamic law has succeeded (such as Libya, Pakistan, Sudan, and Northern Nigeria) the implementation occurred through state legislation (p. 147).

The modern-day efforts to “Islamize” Muslim states and implement *sharia* present a sharp break with the classical tradition to which modern Muslim movements hearken back. As discussed above, during the classical era Islamic law was the province of non-state actors, the scholars, who for-

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51. *Id.* at 210.

52. *See id.* at 209.

53. *See id.* at 208.

54. *See* VIKÓR, *supra* note 8, at 254.

55. Jackson, *supra* note 16, at 5.

mulated and theorized Islamic law, and, while the state appointed *qadis* to apply it, the state had no control over the content of the law. This system allowed for a pluralistic and sophisticated expression of Islamic law where a variety of opinions were seen as equally valid and orthodox. When, however, the state takes upon itself the task of promulgating and enforcing *one* expression of Islamic law, it not only dismisses all other orthodox expressions and interpretations as invalid and illegal, but it also destroys the inherent flexibility of *sharia* to address new situations and circumstances. It is ironic that those who push for a reintroduction of Islamic law as a return to the system that governed the Muslim world before the advent of colonialism are, in fact, radically departing from the classical tradition. Instead of the legal scholars studying and discerning what God's law is, the state, using its political power, declares it.

In advocating for the reintroduction of *sharia*, many are inclined towards codifying Islamic law so as to make its implementation easier—instead of multiple equally authoritative opinions, there is just one legal code for everyone to follow.<sup>56</sup> However, many consider codification to be inherently contradictory to the nature of Islamic law. “Islamic law, being a doctrine and a method rather than a code . . . is by its nature incompatible with being codified, and every codification must subtly distort it.”<sup>57</sup> This ideological difficulty, while often glossed over or ignored, presents serious problems for the implementation of Islamic law by modern Muslim nation-states.<sup>58</sup>

It is in the criminal context that this radical break with the classical tradition is most obvious. When Islamic law is reintroduced, it is often in the realm of criminal law and generally involves the laws with the greatest symbolic power that were least applied—the *hudud* laws.<sup>59</sup> These laws, with their heavy evidentiary burdens and criteria to be met before punishment could be given, were meant to deter and not to be actually applied. In the classical era, legal scholars and judges were restrained in their application and rarely applied the corporal punishments associated with *hudud*, yet today their application is promoted as a sign of religious authenticity. For instance, twelve states in Northern Nigeria have reintroduced Islamic criminal law in the form of a *sharia* penal code.<sup>60</sup> While these codes follow Maliki doctrine (the predominant legal school in the area) they add in and omit important aspects of Maliki doctrine. For instance, the penal code applies the fixed punishment of amputation to certain crimes such as embezzlement and forgery based on less authoritative Maliki opinions. However, those opinions treated amputation for forgery and embezzlement

56. JACKSON, *supra* note 6, at xvi–xvii.

57. Joseph Schacht, *Problems of Modern Islamic Legislation*, 12 *STUDIA ISLAMICA* 99, 108 (1960).

58. See generally Ann Elizabeth Mayer, *The Shari'ah: A Methodology or a Body of Substantive Rules?*, in *ISLAMIC LAW AND JURISPRUDENCE* 177, 177–98 (Nicholas Heer ed., 1990).

59. VIKÓR, *supra* note 8, at 279.

60. RUUD PETERS, *ISLAMIC CRIMINAL LAW IN NIGERIA* 13 (2003).

as a discretionary, not a fixed penalty. This combination “may result in more frequent enforcement of amputation, since, for these offences, the strict conditions for the application of the fixed penalty for theft, a critical constituent of this part of the law, do not seem to apply here” (p. 172). Thus, these Northern Nigerian states have codified certain provisions of Islamic criminal law in a way that harshens their application and increases the use of physical punishments. This is at odds with the conduct of classical jurists who often sought to find ways around the strict punishments of the law.

By codification and state promulgation, the movements that aim to reintroduce Islamic law through the political power of the state end up changing radically the nature of Islamic law, which was traditionally epistemically grounded and contained a variety of equally valid and orthodox viewpoints.

#### CONCLUSION

Peters’ study of Islamic criminal law from the sixteenth century to the present provides the reader with a solid grounding in Islamic legal doctrines, the practice of the Ottoman empire, and the changes resulting from colonization and modern day political movements in the Muslim world. This Notice has attempted to fill in the gaps in Peters work by illustrating how the Ottoman system deviated from the classical relationship between the law and the state; by wresting control of the promulgation of the law away from the scholars and placing it in the hands of the state, the Ottoman Empire radically changed the nature of classical Islamic law. With this background, the reader should be able to understand more fully the historical and legal implications of various movements around the Muslim world to reintroduce Islamic criminal law and how these movements deviate from the classical tradition they often hearken back to.