lives, not just specific illegal acts, were on trial. Again, the focus is not on legal formality, but individual context. Thus we see the same substantive point examined from two different points of view—evidence and punishment.

A second important theme introduced in Gagarin's opening chapter is the much lauded ancient Greek emphasis on open, broad debate. This substantive idea is examined from varying perspectives that make the theme both nuanced and timely. Robert Parker's chapter, for instance, approaches the theme of openness from the perspective of Greek religion. Even in religious matters deemed to be of the utmost importance, citizens' freedom to express their opinions was so fundamental that it was the citizen assembly, not the priests, who would form questions to ask the oracle. Michael Gagarin, in his second of two chapters, examines the theme from early Greek law onward. He observes that from the lack of absolute monarchical power as early as Homer to the later fundamental aspects of Greek law—written legislation and oral procedure—it is clear that the Greeks always placed a unique value on open debate amongst a broad segment of society. As a final, and particularly timely example, Robert W. Wallace focuses on open debate in his chapter on ancient Greek comedy. He uses examples of Old Comedy, particularly the plays of Aristophanes, to demonstrate the initial extraordinary tolerance of the Athenians—they only proscribed speech that threatened substantive, material harm to the city or innocent citizens. He traces the decline of this freedom alongside the New Comedy works of Menander and suggests the growing restrictions on speech were due to Athens's losing allies based on disagreements over foreign policy. This is one of many ways in which this collection's focus on Greek law of 2500 years ago deeply resonates with readers today, no matter what the level of expertise.

The final three chapters, Danielle Allen's "Greek Tragedy and Law," Josiah Ober's "Law and Political Theory," and A. A. Long's "Law and Nature in Greek Thought," focus on how Greek tragedy, political theory, and philosophy can help us better understand Greek law. These short pieces can only skim the surface of such rich approaches to Greek law, aptly highlighting this collection's great achievement—demonstrating the seemingly innumerable ways in which new light can be shed on well-established themes in this timeless and timely field.

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Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century,* New York: Cambridge University Press, 2005. Pp. xi + 219. $70.00 cloth (ISBN 0-521-79226-6); $27.99 paper (ISBN 0-521-79670-9).

Joseph Schacht observed of Islamic law as described by premodern jurisprudents, "Its hold was strongest on the law of family (marriage, divorce, maintenance, &c.), of inheritance, and of pious foundations . . . ; it was weakest, and in some respects even non-existent, on penal law, taxation, constitutional law, and the law of war; and the law of contracts and obligations stands in the middle" (*An Introduction to Islamic Law* [1964], 76). Peters begins by explaining, on the basis of premodern

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legal handbooks, why its hold on penal law in particular should have been so weak. The Qur'an itself lays out penalties for some crimes, notably theft and adultery. However, Islamic law evolved so as to make qur'anic prohibitions highly impractical to enforce. For example, theft was narrowly defined as the removal by the criminal of property from someone's private space, so that if someone handed out someone else's property to an accomplice through a window, neither was guilty of theft, neither having crossed the edge of someone's private space. Moreover, most crimes could be proven only by the testimony of two eyewitnesses (adultery required four), so that possession of stolen goods, for example, could not be taken as evidence of theft. In consequence, Peters shows, premodern Islamic countries normally had parallel judiciaries: the court of the qadi, who would normally find that there was insufficient evidence to convict, and an administrative court to which a qadi might turn over a suspected thief, for example. Convicted on the basis of evidence not admissible in the qadi's court, the thief might be beaten within an inch of his life but he would probably not have his hand cut off, the punishment prescribed in the Qur'an.

In the postcolonial era, Muslim reactionaries have regularly demanded the application of Islamic law in place of codes drawn up in the later nineteenth or earlier twentieth centuries on the pattern of European ones. A religious difficulty is that premodern Islamic law was never exactly a code. The very word for "Islamic law" normally bandied about today, *shari'a* (accent on the middle syllable), is rare in medieval texts. The common word there is fiqh, meaning not a set of rules but the discipline of discerning God's intention from the scattered and often ambiguous evidence He has provided of it. Handbooks normally lay out a range of possibilities in dealing with any particular case, and Sunnis recognized four equally legitimate schools, each with its own range of possibilities. To come up with a single Islamic code is to alter radically the character of the law.

Admittedly, some such alteration was already under way from medieval times. In the Mamluk sultanate (Egypt and Syria), before Peters begins his story, different sorts of cases would be assigned to qadis of different schools according to the expected rulings of the schools of law to which they adhered. In the Ottoman Empire, as Peters outlines, a code was drawn up mainly on the basis of the tradition of the Hanafi school to guide qadis in their decisions, although they continued to hand over most criminals to administrative courts.

Still, the thoroughgoing Islamicization of law in a number of countries since the 1970s has resulted in considerably elaborating and extending the law enforced by qadis, so that it extends to offenses such as embezzlement and driving without a license. Elaboration limits judicial discretion and means that the offenses for which someone may be convicted and the penalties that may be inflicted for them are expressly named. In such ways as these, the new elaboration tends to bring Islamic law closer to the universal norms to which most Islamic states are formally committed by their signatures on, for example, the 1966 International Covenant on Civil and Political Rights. On the other hand, the formal reinstitution of discrimination between men and women and Muslims and non-Muslims, among other things, conflicts with such universal norms. Muslims commonly object that these "universal norms" are really peculiar to the modern West, where they

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are hypocritically ignored at political convenience anyway. Peters suggests that the conflicts are real and significant but that offensive laws will not be altered in response to outside pressure, rather only as Muslims draw on elements of their own tradition to form a vital Islamic human-rights discourse.

This is an excellent book, well informed and readable. I warmly recommend it as an introduction to the history of penal law in Islam, even to Islamic law in general, where it can stand beside Schacht's *Introduction* and, more recently, Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (2005).

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H. Patrick Glenn, *On Common Laws,* Oxford: Oxford University Press, 2005. Pp. 176. $99.00 cloth (ISBN 0-1992-8754-6); $40.00 paper (ISBN 0-1992-2765-9).

The growth of a common market in Europe has led to a renewed interest in the old concept of "common law." The preferred model of modern legal thinkers is the medieval *ius commune,* which they perceive to represent the sort of uniform, pan-European law that they desire to see emulated. H. Patrick Glenn, the Peter M. Laing Professor of Law at McGill University, has written a book insisting that the historical record does not support this definition of common law. Glenn believes that common law was neither hegemonic nor singular. Instead, he finds both multiple possible definitions of the concept and multiple possible instances of common laws. This is an important insight. The rest of his theory, in particular the definition of common law that he claims best describes the post-twelfth-century phenomenon that strongly influenced modern legal systems, proves less satisfying.

The book consists of three chapters. In the first, Glenn presents three primary types of common law (in addition to several other minor forms that he discusses in passing and that will be ignored here). The first was the Roman law concept of *ius gentium,* or the law shared by all peoples, in contradistinction to the *ius civile,* which governed only Roman citizens. The second was the shared customs of the various early medieval Germanic peoples. The Roman law and Germanic custom eventually formed the basis for the third, and historically most important, form of common law. Glenn calls this "relational common law." He defines it as a non-exclusive, non-binding gap-filler that flowed around the local, regional, or national positive law and interacted with this *ius propria* in a fluid and on-going dialect in which the common law played a subservient role. In this sense of the concept, Glenn denominates not just the *ius commune* and the English common law as common laws but also the common customary law of France, the *Siete Partidas* of Spain, the German Pandectist doctrine, Roman-Dutch law, Talmudic and Islamic law, among others. The second chapter discusses the relationship of these common laws with the *iura propria* with which they come into contact, and the third chapter considers the interaction of common laws between themselves.

As significant as is Glenn's point that common law was not a phenomenon

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