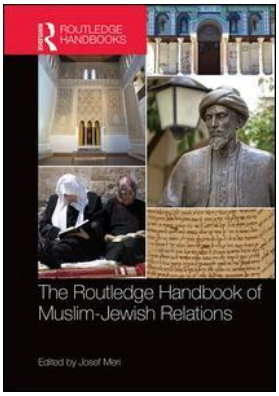

The Routledge Handbook of Muslim–Jewish Relations

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Law

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Law

Islamic and Jewish legal traditions

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Introduction

Law is central to both Judaism and Islam and, "in the view of Islam and Judaism, it is through the conduct of everyday life under the aspect of the law of God that the faithful serve God. Both systems of religion and law concur, for example, that the market place, the bedroom […] all form arenas where God's will is meant to govern."[1] Non-priestly individuals – the rabbis in Judaism and the ulama in Sunni Islam – play an important role in interpreting the laws but, until today, there was never one formal central ecclesiastic institution that exercised strictly binding authority over all Jews or Muslims. Islamic and Jewish legal schools developed various doctrines and methods for deducing rulings in accordance with the needs of the age until modern times.[2] In many cases, Jewish and Islamic laws address the same topics, are developed through similar methods, and are compiled in similar fashion. Scholars have long pointed to similarities and interactions between Jewish and Islamic law throughout history. Their research attempts to connect and compare the religious-legal texts of both religions as well as the cultural, social, political, and economic mechanisms that led to their genesis. However, when comparing both legal systems it is not plausible to claim that one of the two, either Judaism or Islam, has served to define the norm for the other.[3]

In this chapter, we shall not delve into the complex theoretical frameworks of both legal traditions but will rather focus on concrete examples that illustrate traditional Jewish and Islamic legal thinking and discuss their relevance for the present.[4] By highlighting some of the Jewish and Muslim reactions to the issues raised in the public arena by contemporary society, we can observe the similarities and differences between their coping strategies in coming to terms with modernity. This will underscore the profound implications that modern questions and needs have for any discursive developments of the halakhah and the Shari'a.

Judaism

For centuries, Judaism has been characterized by *halakhah*, the interpretative system of Jewish law rooted in torah. Torah, meaning "teaching", refers to both the written Bible and the oral tradition as well as one or more specific teaching or law. The Bible is understood to be God's word, reflecting His will, and is as such, like the Qur'an, normative. However, the nature and character of revelation have been subject to great debate, particularly since the Enlightenment. The rabbis, who as an institution became prominent after the fall of the Second Temple in Jerusalem in 70 CE and whose interpretations are recognized as authoritative, transmitted the oral law. They eventually edited and committed their traditions to writing in the compilations known as Mishnah (ca. 200 CE) and Talmud (the Palestinian Talmud or Talmud of the Land of Israel ca. 400 CE and the Babylonian Talmud, ca. 600 CE). There is no scholarly consensus as to whether the Mishnah was really intended as a law code or was merely a schoolbook whose implementation is doubtful. These major works of antiquity were followed in the medieval period by commentaries, compilations (e.g., those of Maimonides and Joseph Caro), and responsa literature, or collections of questions and answers relating to contemporary problems, the latter the most prominent form of halakhic interpretation today.

As the reader of the Bible will discover, Torah deals not only with what is traditionally understood to pertain to the realm of religion, such as ritual. It encompasses every aspect of daily life including civil and criminal law as well as social, moral and even political issues. Thus in Judaism, no element of human experience may be said to fall outside of the category of religion. However, since the fall of the Second Temple in 70 CE, followed by the dissolution of the independent Jewish state and its subjection to Roman rule, the hegemony of Jewish law and subsequently of the rabbi/judge has been severely limited to dietary laws (*issur vehetter*, literally the forbidden and the permitted), civil monetary matters (*dinei mamonot*; not perforce but by consent of the litigants only), questions of personal status (i.e., who is a Jew), and family law (chiefly marriage and divorce).

With the growth of the Jewish diaspora – a process that had already begun with the fall of the First Temple and the Babylonian Exile in BCE 586 – Jews have been continuously subjected to the rule of others who determined the extent to which Jewish legal and communal authority could be exercised. Yet even when Jews were granted a great deal of leeway to exercise their own internal rule, individual Jews at times turned to the local non-Jewish authorities when in dispute (not only with non-Jews but also with other Jews), hoping for a more favorable outcome.[5] In the wake of the Enlightenment, the number of adherents of natural religion and those propounding the combination of faith and reason as well as some form of religious tolerance grew. Following the French Revolution, eligibility for citizenship expanded to include various non-majority groups, and the question as to whether Jews should also be admitted was heatedly debated in numerous European cities. Many Jews, especially those who were more financially and/or intellectually successful, were eager to meet the demands made upon them by the outside world as preconditions for emancipation. In these primarily Christian societies, religion was understood not as an all-encompassing way of life but rather as a denomination or confession entailing dogmas or specific beliefs. Jews and their practice were considered backward, Oriental, and misanthropic. They were expected to adopt this understanding of religion, and Jewish lay leaders and individuals introduced religious reforms to rid themselves of these stigmas and be regenerated. They did so without consulting the rabbis whose authority was henceforth clearly on the wane.[6]

Belated debates arose among the rabbis as to whether reform was possible and, if so, under what terms. There were those like Abraham Geiger (d. 1874) and Samuel Hirsch (d. 1889) who pressed for systematic reform and yet others, like Samuel Holdheim (d. 1860), who called the entire rabbinic legal system into question. Rejecting the rabbinic system and reverting to Mosaic lawgiving offered only momentary respite for, at a closer look, even many of the biblical laws seemed to be out of date, understandable solely within a specific historical context.[7] Additionally, the field of biblical criticism pointed to a group of authors or editors rather than to a divine origin of the Bible. The rabbis were divided among themselves as to how to evaluate tradition and implement change, if any.

The success of the new movements within Judaism in the nineteenth century depended on the degree to which their ideologies resonated with the various segments of the Jewish population and their origins. On the one extreme, ethical monotheism was the new rallying cry whereby halakhah played a minimal role, if any. At the other end of the spectrum, anything new was declared forbidden (so too Rabbi Moses Schreiber of Pressburg/Bratislava (d. 1839), otherwise known as the Chatam Sofer), an adoption of non-Jewish ways and even anathema. In the newly formed Liberal or Reform movement, individual autonomy became increasingly important from the second half of the nineteenth century until the 1980s; ritual practice was a question of personal choice. For the Conservatives, the halakhah remained central, although historical development was recognized and employed in argumentation in favor of consensual modification and (slow) innovation.

The Orthodox tended to reject historical arguments as extrinsic to the legal system, all change necessarily being based on the traditional interpretative tools available. For some, known as Modern Orthodox or neo-Orthodox, a synthesis between modernity and tradition was sought by employing the age-old technique of finding new interpretations for old commandments, thereby making them relevant and circumventing the need for change. At the same time, spokesmen for neo-Orthodoxy such as Samson Raphael Hirsch (d. 1888) embraced active citizenship and new professions. Exile was no longer understood as the consequences of sin but transformed into a blessing rather than a punishment: God had spread the Jews throughout the world to serve as a "light unto the nations" – an understanding that was no less innovative than ritual/legal reforms.[8]

Islam

In Islam, *Shari'a* and *Fiqh* are two terms that are sometimes interchangeably used in the public debate, while they have different connotations. Shari'a contains not only law but religion and ethics as well, but fiqh (better translated as "Islamic jurisprudence") is the device that infers legal and non-legal (moral/ethical) matters. Besides legal matters, such as family laws, inheritance, commercial transactions and penal codes, classical Islamic law regulates other acts, such as daily prayers, fasting, alms giving, pilgrimage, funeral ceremony, and jihad. In that ethical sense, the Shari'a draws primarily on general rules and objectives, known as *maqāṣid al-Sharīʿa* (ultimate goals of Shari'a), whereas the Fiqh is contained in a variety of legal manuals produced over the centuries and in different geographical regions. These classical legal manuals encompass two general categories: *ʿibādāt* (acts of ritual worship) that stresses the internal relation with God, and *muʿāmalāt* (social interactions), which concerns the external relations with others.[9]

In Islamic legal theory (known as *uṣūl al-fiqh*, or principles of jurisprudence), sources of Islamic law are defined in details. Besides the Qur'an and the Sunna of the Prophet as primary sources that should establish legal rules (*aḥkām*; pl. of *ḥukm*) in law manuals, we come across

qiyās (analogy), *ijmāʿ* (consensus), *maṣlaḥa* (public interest), *ʿurf* (customary laws), and *qawl al-ṣaḥāba* (sayings of the Companions of the Prophet). In theory, the deduction of rulings on the basis of such principles should be established within the framework of *ijtihād*, which is "the exertion of mental energy in the search for a legal opinion to the extent that the faculties of the jurist become incapable of further effort."[10]

Law and religion are inseparable in classical legal discourse in Islam. Nevertheless, the role of legislators is defined in the manuals of Islamic law. In classical Islam the offices of mufti (jurisconsult) and *qāḍī* (judge) were entwined but differ in several ways. The power of the *qāḍī* is binding in executing the rule of law. As Islamic laws were not codified in classical times, a *qāḍī* was expected to have vast knowledge of law manuals according to his school of law. On the other hand, a mufti is the qualified person capable of issuing religious answers raised by the believers on matters of religious practice and doctrine. Fatwa played an important role in the gradual development of Islamic law throughout history. Besides its function as a legal tool in legal discourse, fatwa is considered a social instrument. In many cases, the question of the *mustaftī* (petitioner) reveals particular realities and needs of Muslim societies outside the *muftī* mind, while the answer is the content of the legal methods and procedures by which the mufti engages his knowledge and reflections on the law/jurisprudence.[11]

In addressing legal implications related to close social contacts between Muslims and *dhimmīs* (Jews and Christians), such as mixed marriages, transactions, friendship, the *fuqahāʾ* (Muslim jurists) in al-Andalus, for example, were keen on creating a "Muslim habitus" that should define a Muslim distinctive identity within a complex social reality of circumstances. An example is the question of whether a Muslim son was allowed to lead his blind Christian mother to church. Ibn Rushd (al-Jadd, d. 1126) states that Imām Mālik is cited in some sources as having no objection, while others cite his disapproval. Some other Mālikī jurists are said to have no objection in this case as long as the son neither enters the church nor gives his mother anything that will benefit the church.[12]

In the modern age, besides the informal ways of *iftāʾ*, the position of the mufti has been institutionalized by the state in the Muslim world. This institution of fatwa has also started to play a major role among Muslims in the West in the last decennia. Phrases such as "American Fiqh" or "European Islam" have been suggested to designate the position of Muslims within the European polity. Other new concepts, such as *Fiqh al-Aqalliyyāt* (jurisprudence of minorities) or *Fiqh al-Mughtaribīn* (jurisprudence of emigrants) in Shi'i sources have become the common terms for the legal discourses related to the life of Muslim minorities in the West. One of the most prolific institutions is the European Council for Fatwa and Research (founded 1997), which was specifically established to respond to the urgent needs of minorities for religious guidelines in their non-Islamic environment.[13]

Devotions and purity

In the private devotional sphere and in rituals, Judaism and Islam categorize the world similarly, addressing nearly the same issues but in different terms. In matters of purity, certain foods or animals are considered impure and may not be consumed. Similarly, specific human discharges, such as those associated with sexual intercourse, menstruation, and childbirth, must be dealt with very carefully. In devotions, purification of the body, especially after such ritual impurity, is strictly required by way of ceremonial bathing. The same holds true for fasting, which is necessitated by both religions during specific times of the year as a common means of expiation. Fasting requires those of sound body to abstain from food, drink, and

sexual intercourse. At times, believers deprive themselves of additional pleasures during an entire day or longer, for example on Yom Kippur, the Jewish Day of Atonement, when bathing and wearing leather (a sign of luxury) are prohibited.[14]

Judaism

Prayer in Judaism is both private and public, is institutionalized, and takes place morning, noon, and night at prescribed times. The Torah reading takes place during prayer services thrice weekly in a quorum of ten or more – traditionally male – adults. Although there is clear evidence that Jews convened in the synagogue prior to the fall of the Temple, prayer became a permanent and definitive substitute for sacrifice and pilgrimage only after the Temple ceased to exist. *ʿAvodah,* or service, the term used for Temple activities and specifically for sacrifice, was transformed into service or duties of the heart (*ʿavodah she-balev*). The prayer service has taken on a specific form in the course of the centuries, linking the present observer with the patriarchs (and matriarchs), his or her direct forebears, centuries of supplicants, and the memory of Jerusalem. It is not only the wording but also intentionality that is important in prayer, a focus that enhances the spiritual experience. While post-Temple service refers specifically to prayer – both communal and private, petitionary and thanksgiving – service (*ʿavodah*) is also understood in a broader sense and linked to both obedience to God's commandments (Torah) and deeds of loving-kindness (*g'milut ḥaṣadim*). The three pillars are said to form the mainstay of the world.[15]

With the cessation of sacrifice, the chief means of purification also came to an end. In Temple times, bodily impurity caused by contact with impure animals, dead bodies, childbirth, sexual emissions, and menstruation was remedied by sacrifice and/or ablutions; the loss of the Temple meant that almost all regulations pertaining to impurity fell into disuse. Remarkably, though, the laws of family purity remained intact, and women are required to immerse themselves in the *miqveh* or ritual bath seven days after their menstrual period has ended. Men belonging to various Hasidic groups visit the *miqveh* just prior to the commencement of the Sabbath and holidays as a sign of piety. Since the second feminist wave (1960s to early 1980s), non-Orthodox women also tend to immerse themselves, particularly as a form of spirituality and connection with God and history as well as a celebration of the body, womanhood, and sisterhood.[16] Simultaneously, modern-day *miqva'ot* run by ultra-Orthodox organizations such as Chabad (the Lubavitcher Hasidim) are often set up like luxury spas and expressly presented as such on YouTube films.[17]

Islam

In canonical Islamic law, devotional acts, or *ʿibādāt*, clarify the external practices and values of the acts of worship, including ablution (*ṭahāra*), prayer (*ṣalāt*), fasting (*ṣawm*), alms-giving (*zakāt*), and pilgrimage (*Ḥajj*). Besides their legal character, these sub-categories are meant to be spiritual devices in the life of believers. The well-known Muslim theologian Abū Ḥāmid al-Ghazālī (d. 1111) makes a parallel between devotional acts or rituals and medicine. In his view, prophets are the "physicians of hearts," and formal worship is the "medicine for the diseases of hearts." However, the components and proportions of this remedy cannot be fully comprehended by the human mental capacity.[18]

The observance of such ritual acts as legal percepts in Islamic law is (as in Judaism) based on the Islamic lunar calendar. The names of these lunar months had been known among the Arabs even before Islam. The calculations of the beginning and end of months are

crucial in determining the length of the month of fasting and the starting day of the annual pilgrimage in Mecca. In modern times, Muslims are encountering new developments that seem problematic for the implementation of this calendar. In 1985, Prince Sultan bin Salman bin Abdul-Aziz Al Saud became the first Muslim astronaut to fly in space on board the space shuttle flight STS-51-G on *Discovery.* The Western press questioned the prince's observance of Muslim rituals, especially prayers and fasting, in space: how he could find the opportunity and the proper position to pray five times a day in the direction of Mecca when a day passed every ninety minutes. Al Saud was said to have complied with his religion by carrying a small Qur'an into space.[19]

The beginning and end of the fasting month of Ramadan are determined by religious and state authorities in the countries of Muslim majorities. As Muslims in the West belong to different backgrounds and lack recognized Muslim political authorities, each community sometimes prefers to follow the land of origin in sighting the moon during the month of Ramadan. Members and organizations of the Turkish community are particularly inclined to follow astronomical calculations in determining the beginning and end of the month. These choices caused division among the Muslim communities in the West; and Muslims have never agreed upon a single lunar calendar. However, Muslim religious legal scholars concerned with the position of Muslims minorities in the West, such as the Fiqh Council of North America, have agreed that religious festivals in the United States such as Eid, the end of the fasting month of Ramadan, will now be fixed according to a predetermined calendar.[20] In order to promote a sense of unity among Muslims in the West, the European Research Council for Fatwa and Research (presided over by the well-known religious scholar Yūsuf al-Qaraḍāwī) passed a resolution that declared that it would make use of the astronomical calculations in appointing the month of Ramadan. In Qaraḍāwī's words, "the objective of this Council is to promote a uniform *fatwa* in Europe and to prevent controversy and intellectual conflicts regards the respective issues wherever possible."[21]

Dietary laws

The rules of ritual slaughter in Judaism and Islam fall in the categories of *kosher/kashrut* (that which is fit) and *halal*, respectively, and concur to a large extent, yet differ on several detailed points. For various political reasons, representatives of branches within the two groups rarely join together in public protest when these rites are challenged in society at large. One of the reasons is the Jews' fear of their citizenship once more coming under fire, as they understand to be the case for Muslims at this time.

Judaism

Jewish dietary laws today are based on both biblical and rabbinic ordinances. Leviticus, chapter 11 spells out what mammals, fish, fowl, and insects may or may not be eaten. In general, ruminant animals with split hooves are kosher (i.e., fit for consumption), as are fish with fins and scales. As for fowl, there are no categorical definitions, and all those listed in Leviticus 11:13–19 may not be eaten. All insects are forbidden, with the exception of certain members of the locust family having jointed legs above the feet allowing them to leap. Forbidden members of all categories are considered abominations, and contact with their dead carcasses leads to impurity.

Further rules are derived from biblical passages by means of interpretation. The prohibition of eating milk and meat together is based on the biblical injunction "You shall

not boil a kid in its mother's milk" (Exodus 23:19; Exodus 34:26; Deuteronomy 14:21), the intention of which is unclear. Some rabbinic authorities claim that the Bible rejects idolatrous practices here; others discover ethical motives regarding humane treatment of animals in these verses.[22]

While non-Jews have always found Jewish eating habits to be strange at best, if not misanthropic in that they reinforce a separation between Jews and non-Jews, undoubtedly the most controversial rules are those pertaining to ritual slaughter. Deuteronomy 12:23–24 states, "Only be sure to refrain from eating blood, because the blood is the source of life and you must not consume blood with the meat. … instead pour it on the ground as you would water."[23] The rabbis developed an extensive guide for the slaughtering of animals whereby the jugular vein is cut with one swift gesture. Rules include the qualifications of the *shochet* (the person executing the slaughtering, who is to be well informed and live a life guided by the commandments), the sharpness of the knife, and the health of the animal prior to slaughtering, including internal organs.

Throughout the nineteenth and twentieth centuries, ritual slaughter and circumcision were linked and addressed in debates concerning the Jews' position in society, as they are today regarding Muslims and – inadvertently – Jews as well. *Sheḥita* and *brit mila* (circumcision) were but two elements of a larger narrative in which Jewish physical characteristics were invoked in order to stress their "otherness." While animal welfare is said to be at stake, it is clear that prior to the use of electric stunning, other means of slaughtering – whereby animals were bludgeoned, for example – were far crueler than their Jewish counterpart. Political parties demanding Jewish and Muslim assimilation and animal rights groups have joined in calling for the prohibition of kosher slaughtering. However, even present-day methods of stunning are not foolproof: At least 10 per cent of all animals slaughtered suffer due to incorrect procedures, time lapse between stunning and sticking, or system failures. Most halakhists do not permit stunning, based on the arguments that Jewish law demands that only uninjured animals are fit for consumption; (pre-)stunning leads to injury; and stunning in fact takes place most quickly with the incision when carried out properly according to Jewish law.[24]

Islam

In Islamic law, the term *halal* refers to what is "lawful or permitted," in contrast to *haram*, which means "unlawful or not permissible." Two significant areas related to these two concepts are rituals and dietary laws. In Islamic law, all sorts of good food (*ṭayyibāt*) are permissible, except what God has made forbidden. In the Qur'an, the most prominently forbidden are carrion, blood, pork, and animals consecrated to pagan gods (Qur'an 2:173 and 16:115). Also among the unlawful sorts are animals that are "killed by strangling, or by a violent blow, or by a headlong fall, or by the goring of horns, or those that have been (partly) eaten by a wild animal — unless you are able to slaughter it (before death)" (Qur'an 5:3). All animals, except fish and sea-life, must therefore be slaughtered with a swift and deep cut with a sharp knife in the throat. During this process, the jugular veins and carotid arteries of the animal must be cut in order to drain the body of blood. It is also an Islamic requirement to pronounce the name of Allah at the time of slaughter. Food and animals slaughtered by the People of the Book (mostly Jews and Christians) are permissible for Muslims.

Nowadays, halal certificates have become a commercial trademark in the Muslim world and the West. New technological developments in food processing and the stunning of animals have become major challenges for Muslims living as a minority in the West.

Muslim scholars are divided regarding the question of stunning in relation to the Qur'anic prescriptions of halal slaughtering. In response to a question from South Africa in the early twentieth century (well known as the Transvaal Fatwa), the Egyptian reformist scholar Muhammad Abduh (d. 1905) allowed the consumption of the meat of animals slaughtered by Christians in South Africa despite the fact that they used to hit the animal on its head in advance.[25] Also, the Deobandi mufti from Delhi, Mawlānā Kifāyat Allāh (d. 1953), issued a fatwa in 1935 in which he states that it is "lawful in ritual slaughtering to use an instrument to stun the animal, as long as the animal does not pass away (as a consequence of this stunning) and one is dealing, therefore, with stunning only."[26] The Indonesian religious scholars of Majelis Ulama Indonesia and the Australian Federation of Islamic Councils, on the other hand, accept stunning before slaughtering; Malaysia has imposed specific guidelines to be followed in modern stunning processes. As such techniques were not known at the time of the Prophet and can achieve a more compassionate death for animals, some of these scholars found no problem with stunning as long as it is not the direct cause of death.[27] Other Muslim scholars are not ready to accept stunning, as it leads to death and deviates from the traditional requirements laid down by the Qur'an and the Sunna.[28]

The Danish scholar Johan Fischer argues that

> the concern over halal is far more pronounced in some Southeast Asian countries such as Malaysia, Indonesia and Singapore compared to the Middle East. Europe, U.S., Canada and Australia are emerging as centers with large and growing Muslim populations and as major markets for halal production, trade and consumption.[29]

It is true that despite the different attitudes toward Muslim ritual slaughtering in Europe, halal markets are flourishing in many areas. In November 2005 the halal exhibition at the major World Food Market (WFM) in London was held for the first time. The WFM also includes an ethnic specialty food exhibition as well as a kosher exhibition.[30] Another example is The Netherlands, where some years ago large supermarkets in areas where Muslims are concentrated started to allocate special shelves for halal food and meat.

Law and ethics

Jewish and Muslim legislators indicate that the implementation of Jewish and Islamic legal rulings is meant to maximize ethical awareness in society. Jewish law not only deals with civil and criminal matters but includes such concepts as the sanctity of all creatures, creation of human beings in God's image, and the furthering of peace. The Talmud, for example, recounts the behavior of the rabbis at length with the apparent purpose of contrasting their deeds with those demanded by law. The message to be distilled from these tales is that the law is one thing, but compassionate behavior is another, and clearly it is the latter that is to be emulated. The story of rabbis Jeremiah and Abba in the Babylonian Talmud Yomah 87a is illustrative: If one person offends another, he or she should ask for forgiveness, even sending gifts, say flowers, until the injured party is willing to concede. The Talmud sets a limit of three attempts before one is allowed to give up trying. However, in the Talmudic commentary on this passage, rabbi Jeremiah posts himself day and night on the ground in front of the house of rabbi Abba, who for some inexplicable reason seems to feel offended. One understands that rabbi Jeremiah displays an extreme form of humility (perhaps unworthy of such a renowned sage and moreover, apparently unwarranted!) while rabbi Abba's behavior is excessive, allowing his colleague to be put to shame. It is only after the

servant woman has thrown garbage out of the window that rabbi Abba is prepared to receive rabbi Jeremiah.[31]

However, due to scientific developments and changing societal values, ethical questions today are often far removed from those of the Talmudic or even the medieval period. The inception of life and death, the environment, and women's rights are just three areas that challenge the halakhic system and require urgent attention if this system is to remain feasible and pertinent today.

Islamic law appeared in the same age when the hadith (reports and sayings of the Prophet) were said to have been collected in the second half of the second century of the Islamic calendar. Therefore, such reports played a great role in adopting the Prophet of Islam as the role model for the application of laws and their supposed ethics. In the Qur'an, piety can be achieved not only in prayer and devotional acts but by means of social justice and interactions. In that sense, Islam presents a worldview in which the objective of human existence is to fulfill the "covenant" that God made with human beings to create a just society.[32] In Islamic law, legal issues related to *muʿāmalāt* (social transactions) are regularly ruled by the arch concept of *maqāṣid al-sharīʿa* (or ultimate goals of the Shari'a), mentioned above. There are five well-known components of the *maqāṣid*, namely *Ḥifẓ al-ʿaql, ḥifẓ al-dīn, ḥifẓ al-māl*, *ḥifẓ al-nafs*, and *ḥifẓ al-nasl* (the protection of one's reason, religion, property, the self, and offspring). Muslim legal theoreticians do not consider Islamic law as a ready-made code. In their observance of the *maqāṣid*, jurists are required to search for legal rules in the primary Muslim sources (namely the Qur'an and the hadith) and then follow the records of early juridical consensus (*ijmāʿ*) and analogical reasoning (*qiyās*).[33] In dealing with ethical issues in the fields of economy, medicine, and environment, Muslim legalists try to follow these procedures on the basis of *maṣlaḥa* (public interest and welfare).[34]

Medical ethics

Judaism

Various approaches have been taken on issues of medical ethics. Orthodox authorities mainly make their decisions by way of analogy or precedence, comparing present-day situations to those of the past. Some, but not the majority, attempt to deduce general rules that can then be applied to specific cases, and others, by extension, enroll teleology (i.e., the value Torah attributes to human life but also what human life entails). Some – mainly, but not solely – non-Orthodox experts agree that while continuity with the past is important, the Jewish legal system, like most other legal systems, is not able to cope with all the innovative developments on the medical front. They argue for far-reaching individual autonomy in decision making, which they justify by an appeal to the so-called covenantal model whereby human beings are granted freedom to participate in and perfect creation as God's partner.[35] All agree that in Judaism life is sacred and should be preserved and that euthanasia is prohibited, but is this true in all instances? The halakhah (*Shulḥan ʿArukh*, *Yoreh Deʿah* 339:1) allows removing impediments, such as the noise of a woodchopper, for those whose death is imminent (i.e., will take place within 72 hours). Should someone whose heart beats but whose brain is dead be kept alive artificially or does this entail impediment to imminent death? Or does brain death already entail death, contrary to traditional definitions? The various approaches sketched heretofore lead to divergent responses, and even within Orthodox circles there is no consensus on many issues. One may presume that most Jews who do not live within tightly knit communities

entailing strict social control make their own individual decisions without consulting the rabbi or community or even tradition in any interpretation.[36]

Islam

In medical ethics, two influential Islamic international religio-scientific institutions are concerned with the analysis of new medical technological discoveries from an Islamic legal perspective: the Islamic Organization of Medical Sciences (IOMS) and the International Islamic Fiqh Academy (IIFA). Both Muslim religious jurists and scientists (mostly of Muslim backgrounds) meet on a regular basis to discuss medical issues and their influence on traditional legal thought. Among such issues are human cloning, organ donation and transplantation, and milk banks. With organ donation, for example, Muslim scholars agree that both life and cadaveric organ donations are in principle permitted in Islam even to non-Muslims. The European Research Council for Fatwa and Research indicates that allotransplantation is "permissible in Islam as long as one is certain (1) that the potential benefits of such an operation outweigh the probable ensuing harms and (2) that the purpose for this operation is legitimate which is the case, among others, when replacing a missing organ, restoring its shape or usual function or reforming a defect or removing ugliness that causes psychological or physical harm."[37] Concerning cadaveric transplant, they state "that it is permissible as long as the receptor's life or a fundamental function in his body is dependent on receiving such an organ."[38]

Law and modern economics

Judaism

Proverbial is the following quotation from the Babylonian Talmud, Shabbat 31a: "The first question an individual is asked in the afterlife at the final judgment is: 'Were you honest in your business dealings?'" This question pertains not to the relationship between God and human beings but between man/woman and man/woman. The implication would seem to be that the easiest form of fraud is business fraud and perhaps fraud that one does not readily consider fraud but common business practice. Without doubt, the line between fraud and acceptable practice is socially determined; however, as far as business dealings are concerned, Judaism is not merely interested in what is legally acceptable but in what is righteous.[39]

The Bible warns against using false weights and measures as well as about securing the salaries of workers, caring for the sick, the poor, and widows and orphans (the latter pair representing the helpless and unprotected of the biblical period) and stimulates alms giving (*tzedaqah*) as much as possible. In contrast to Islam, lending money with interest (*tarbbit/ribbit*) is permitted, interest considered normal compensation for the risk taken of not being paid back after having lent money. Throughout the Middle Ages and early modern period, Jews often functioned as moneylenders and *Hofjuden* (Court Jews), providing the mint for warfare and other adventures of European monarchs, thus fulfilling roles that at times brought them great wealth indeed but often enough left them destitute. Contemporary halakhah, too, allows for capital gains; however, Jews are admonished not to ask more than the going rates (i.e., not to be involved in oppressive conduct). The latter is a problem confronting Jewish organizations, for example, that are concerned about receiving charity donations from donors who may have earned their fortunes in either an illegal or ethically questionable manner, such as production in developing countries engaged in cheap or even child labor.[40]

Islam

In classical legal economic thought, *zakāt* (alms giving) is an obligatory pillar of Islam. Trade is permitted in everything, except what God has prohibited. Commercial deals are basically allowed but not in cases of uncertainty (*gharar*) or gambling (*maysir*). These are banned in order to guarantee trenchancy and fairness in transactions. The medieval Andalusi Muslim jurist Ibn Ḥazm (d. 1064) defines gharar as a transaction in which "the purchaser does not know what he has bought and the seller does not know what he has sold."[41] Transparency, accuracy, and disclosure of all information are necessary conditions in contracts. For instance, the Prophet forbade the sale of unborn animals in mothers' wombs.[42] *Ribā* (usury) is also forbidden in Islam, as it contains surplus values without any corresponding gains and leads to exploitation of poor debtors (Qur'an 2:275, 276, and 278 and 3:130).[43] In the modern age, Western tools, especially from the colonial times on, replaced classical Islamic legal economic instruments. The fields of insurance and financial derivatives are contrary to the Islamic concept of gharar.[44] *Ribā* has been challenged by the internationally dominant economic measures of bank interest, house mortgages, and loans. A reinterpretation of Islamic legal sources has thus been needed in order to formulate an Islamic economic system parallel to the modern dominant ideologies, such as communism or capitalism. As for loans and interests, a group of Muslim scholars, including the Pakistani mufti Taqi Usmani, argue that bank financing and interest should fall under the concept of *ribā* prohibited by the Qur'an. On the other hand, the late Grand Sheikh of al-Azhar University in Cairo, Sayyid Tantawi, issued a fatwa in the late 1980s stating that the reason for the impermissibility of *ribā* is the damage caused to the debtor, which does not apply to bank transactions and deposits.[45] In the West, the question of mortgage has become crucial among Muslims. The European Council for Fatwa and Research has recently allowed Muslims in minority contexts to buy a house on a mortgage. This permissibility is based on the fact that a house is an essential part of one's family and living; as long as there is no other way to buy a house except on a mortgage, there is no harm for Muslims making use of it. Moreover, Muslims in a non-Muslim domain are not obliged to establish the civil, financial, and political rules of Shari'a.[46]

The position of women

Over the last 45 years, the gender question has marked boundaries between Islamic groups as well as between the various movements of Judaism.[47] One of the considerations involved is whether the imposition of (possibly) non-Jewish or non-Islamic Western categories on, respectively, Jewish and Islamic thought is desirable or permissible. Orthodox rabbis and Muslim religious leaders have asked whether the demand for change is propelled by Western feminism or is a topic inherent to Judaism and Islam. And should one indeed wish to bring about change, how could one go about doing so? Is it a matter of responsa or fiqh (i.e., Jewish and Islamic legal deliberations)? If so, how flexible is the law, and how open is it to debate and contextualization? The same questions are by extension applicable to the Torah, Qur'an, and Sunna.

Judaism

In Judaism as in other religions, traditional gender roles have been predominant. Although rabbinic literature has both positive and negative opinions of women, one thing is clear: "Women are a separate people" (Babylonian Talmud Shabbat 62a), i.e., different from men.

In a system where men serve as the norm, this difference certainly pertains to women's social and legal status but may also regard innate qualities. Consequently, women were neither rabbis nor cantors, neither interpreters of Jewish law nor witnesses in court. Having been denied passive – and at times even active – voting rights, they served neither as presidents of congregations nor as board members.

The discrepancy in status holds true despite the fact that Jewish women occupied and still do occupy a vital place in family life, economics, and ritual observance, the latter not only at home but in the public arena. In the 1960s, Jewish women, well-educated and active in the Jewish community, called for equal rights. Hebrew Union College, the rabbinical school of the American Reform movement, opened its doors to female students at the end of that decade and, in 1972, Sally Priesand was the first American woman to be ordained. Shortly thereafter, in 1975, the first woman graduated from Hebrew Union College–Jewish Institute of Religion's cantorial school. Both the American Reconstructionist and Conservative movements rapidly followed suit, the latter, however, not without considerable deliberation.[48] More recently, in 2009, Sara Hurwitz was the first Orthodox Jewish woman in the United States to be given the title of "rabba" (female rabbi) by her teacher Rabbi Avi Weiss of the Hebrew Institute of Riverdale (Bronx, NY). Today, the large percentage of women active on synagogue boards, attending Jewish seminaries, and serving congregations worldwide has even led to talk of the feminization of religion (as was the case in the nineteenth century).[49]

Being denied the right to occupy public functions is not the only problem Jewish women encounter. Undoubtedly the most urgent problem – a problem that has in fact been pressing for almost 2,000 years – is located in Jewish marriage and divorce laws: the *ʿagunah*. The *ʿagunah* or "chained woman" is a woman who is officially married yet lives without/is separated from her husband. This may be due to a variety of reasons, for example: (1) A husband may abandon his wife and refuse to grant her a bill of divorce (the *get*); (2) the husband may have disappeared while on a long journey, at sea, or at war, and there is no witness to attest to his death; or (3) the husband has become mentally ill and admitted to a psychiatric ward. As long as no bill of divorce has been tendered her or no witness to the husband's death is present, the woman is considered married and may therefore not enter a new relationship.[50]

The husband of a married woman exercises authority over her, an authority first exercised by her father when she is a minor. Her husband has control of her property (in principle and unless otherwise stipulated) as well as a say in her comings and goings. Her lack of autonomy is confirmed by the divorce ceremony and the wording of the bill of divorce where she is said to regain her freedom and authority over her own self.

The bill of divorce is issued solely by the man and, in order to be valid, must be accepted by the woman.[51] Most problems concerning divorce are rooted in the husband's recalcitrance and refusal to issue a *get*. Woman have been subjected to blackmail regarding alimony or custody of the children in exchange for a bill of divorce; by now, kidnapping is an increasingly common phenomenon in the Jewish world. Many solutions have been proffered for the problem of the *ʿagunah* over the course of time, from the earliest period up to the present. These solutions are legal solutions, inasmuch as Jewish marriage is clearly not simply a statement of love but a juridical matter; like other legal transactions, it is sealed by contract. One solution was that proposed by the Jewish Reform or Liberal movement in Germany in the nineteenth century: the recognition of civil divorce by religious authorities in countries where civil marriage and divorce were required by civil law prior to religious marriage and its dissolution.[52] American Reform Jews (the heirs of German Liberal Jewish legacy) adhered

to this ruling for more than 75 years. Orthodox groups, however, refused to relinquish or diminish the power of Jewish law (as they saw it) by equating religious divorce with civil divorce.[53] Should a woman without a *get* nevertheless remarry civilly and bear children by another man, these children would be deemed illegitimate. In practice, the divorced status of members of the Reform Jewish communities was not recognized, and marriage between Orthodox and non-Orthodox Jews henceforth became problematic.

In an effort to maintain the unity of the Jewish people,[54] many alternative solutions have been offered, among others (1) prenuptial agreements; (2) compelled divorce; (3) mistaken transaction; and (4) annulment. Rabbis of the Conservative and Reform movements worldwide frequently encourage couples to include a prenuptial agreement in their marriage contract. Couples acknowledge thereby that, upon the dissolution of the marriage in a civil court, each is bound to appear before a *Bet Din* (Jewish court of law) and abide by its instructions and decisions with respect to the dissolution of their marriage under Jewish law. This undertaking may, according to the agreement, be enforced by a civil court of law, whose power is acknowledged and enforceable, as opposed to that of rabbinical courts.

Prenuptial voluntary agreement precludes the use of force, forbidden in Judaism. However, rabbis (including the Orthodox) agree that a court may compel a husband to divorce his wife if there is sufficient reason to do so, such as wife beating. When a recalcitrant man is put under duress, resort is made to a legal fiction whereby compliance is voluntary. Recourse to such extreme measures is rare, but alternative forms of pressure such as shunning are more common.[55]

In cases of "mistaken transaction," a man may fail to disclose things from the past such as mental illness or a previous marriage (perhaps involving concomitant financial obligations). Betrothal in such a case has no validity and obviates the need for a divorce.[56] Retroactive annulment was already justified in the early rabbinic period, in cases of failure to conform to the institution of marriage under rabbinic terms.[57] Refusing to divorce one's wife should she so desire is a case in point.

Today, non-Orthodox movements are making increasing use of prenuptial agreements; however, attempts to introduce these across denominational lines have failed.[58] Orthodox rabbis rarely avail themselves of the possibilities for dissolving a marriage, arguing for stricter rather than more lenient decisions due to their supposed lack of authority.[59] It would seem that changes in Jewish women's status will be effected only if more women become legal experts and demand authority, regardless of their titles.[60] For it is not so much the titles as the role of legal arbiter that women bearing such titles could play that is controversial. Progress has been slow, and both Jewish and Muslim women have sought redress in state courts. In several cases, the courts have found the husbands guilty of violating the European Convention on Human Rights and demanded that they grant a religious bill of divorce on penalty of a fine on delay.[61]

Islam

Clearly, the gender question is as pivotal in Islam as it is in Judaism; no serious book on Islam and modernity could skirt the issue of the marginalization of women and their exclusion from public life. And there is perhaps no better testing ground than the position of women for the flexibility of Islamic/Jewish law and the willingness of its interpreters to study critically the historical context of the Shari'a/halakhah, making use of moral and ethical guidelines.

As part of Muslim family law, gender issues connected to polygamy, divorce, inheritance, *hijab* (headscarf), and men-women segregation are the most debated subjects in modern

times. Regarding polygamy, for example, Muhammad Abduh, the aforementioned former mufti of Egypt, argues that the Qur'anic value of impartiality that is imposed on polygamous men (Qur'an 3:4) makes monogamy the Qur'anic ideal. A reformist reinterpretation of the verse therefore implies restriction rather than encouraging men to have more than one wife.[62] The modern Muslim woman – modern but not Western, intellectual yet with covered hair, active in society yet very much supportive of family values – is the European Muslim thinker Tariq Ramadan's vision of the ideal woman of the future. While acknowledging the limitations of women's social participation and the inequalities of marriage and inheritance laws, he warns that principles of faith rather than Western standards must determine social and political projects.[63] With the headscarf, it is neither a sign of social belonging nor part of an Islamic façade. It is an obligation, to be undertaken voluntarily, pointing to the importance of modesty in Islam and the notion that human beings are much more than just "bodies," Ramadan claims.[64] As for the controversial *sūra* on wife beating (Qur'an 4:34), the text is not in favor of violence but a warning against its use; moreover, not the verse but the example set by the Prophet for proper marital relationships is most important in Ramadan's view.[65]

The Egyptian-American scholar Khalid Abou El Fadl is much less traditional on this issue, and he accuses Muslim puritans of considering women as a source of sexual enticement, danger, and discord, deficient and subservient, to be placed under the tutelage of men. If the divine ideal and goal of Islam is justice, as Abou El Fadl claims, then justice, "provided the circumstances are appropriate, demands equality in value, worth, and opportunity."[66] While deploring abuse and the violation of rights, pointing to moral rights and social demand, and calling for the use of jurisprudential analysis to effect change, Abou El Fadl concludes that it is women themselves who must play the critical role in bringing about change.[67]

Amina Wadud, Afro-American professor emerita of Islamic studies, like Ramadan, Abou El Fadl and moderate Muslims in general, seeks to develop a female-inclusive theory of Islam based on interpretative authority. Her motivation, she claims, is pro-faith and "any comparative analysis with secular Western theories or strategies for mainstreaming women in all aspects of human development and governance is coincidental and secondary."[68] Wadud goes further than her male counterparts when pointing to gender disparity as "an underlying characteristic of Shari'a in its historical development" and calling for proper understanding of the importance of gender as a category of legal rules.[69] Like some of her Jewish feminist counterparts, Wadud attributes the gender divide in ritual (e.g., the *hijab*, the equivalent of the head covering or *sheitl* of Jewish women) to socially and historically determined custom rather than legal mandate and theological rationale.[70] While the gender divide might have been meant for discretion, it leads to hierarchy and disparity in opportunities. Worse, in Islam the male is the norm; men are public leaders and moral agents while women are subservient.[71]

For Wadud, like Abraham Geiger in the nineteenth century, reform and the Qur'an are synonymous and demand change by considering things from the perspective of human development.[72] This might even lead to saying "no" to the text, as in the case of the *sūra* on hostile women, but only after having considered (1) the context of the *sūra*; (2) the aim of the relevant fiqh, bearing in mind the principle of justice; and (3) the fact that a text may have multiple meanings. Finally, taking the data on domestic violence into consideration, she must in the end let go of this text.[73] Yet Wadud goes even further, beyond the text, to reflection on creation, to the transcendent, which has at least an equal say in what human relations and the values of Islam are all about. Does this mean that she, like Susannah Heschel and Judith Plaskow, has come to the conclusion that the "Right Question is Theological" (i.e., that the problem is not just sociological but created and sustained by the text itself, rooted

in the very foundations of Islamic tradition and thus beyond any possible contextualization or legal repair)?[74]

"Church" and state

Judaism

The church-state relationship loomed large on the horizon with the establishment of the State of Israel in 1948. While the Zionist movements all had a Jewish state in mind, there was no one overarching idea about what that Jewishness meant and how it was to be implemented. Religious Zionists initially hoped for the reinstitution of halakhah as the legal system of the new state. The halakhah would of course have to be updated in order to meet contemporary demands, such as the running of a kibbutz and the milking of cows or the operating of hotel elevators and public transport on the Sabbath. And how would Jewish law function for non-Jews living in Israel? The majority was in favor of a separation of church and state and this is in fact the situation today. However, Ben Gurion (d. 1973), Israel's first prime minister, did make concessions to the Orthodox factions, granting them hegemony in questions of Jewish marriage and divorce and – at least to some extent – personal status. Insofar as Jewish marriage is one contracted between two Jews, the question as to "who is a Jew" must meet Orthodox criteria. However, this is not the case for the Law of Return that grants anyone of Jewish descent the right to become a citizen of the State of Israel. This paradox causes problems particularly because there is neither civil marriage nor divorce in Israel although civil marriages performed in other states are recognized by the state. Moreover, non-Orthodox Jewish marriages and divorce are not recognized; in fact, it was not until recently that non-Orthodox religious movements in Israel were recognized at all and treated on a par with the Orthodox in matters such as tax exemption for synagogue property and state contributions toward the clergy's salary.

Islam

The application of Shari'a in the state is a complex issue from an Islamic point of view. Although the classical meaning of Shari'a stresses a "unification" of religion and state, the "historically transferred Sharia encompasses an immense, full spectrum of considerations and ideologies – ranging from personal beliefs to state ideology, from living law to formal positive law, from moderate to 'puritan' interpretations."[75] According to the well-known scholar of Islamic law Wael Hallaq, until the nineteenth century the Shari'a had successfully negotiated customary and local contemporary practices throughout 1,200 years and had emerged as the supreme moral force regulating government and society. In colonial times, the socioeconomic and political power of the Shari'a in regulating Muslim societies structurally disintegrated.[76] In modern times, Muslim states were generally forced to adopt a separation between "religion and state." Therefore, while the Shari'a remains the moral code of Muslim life, there is no one common model of the Muslim nation-state based on Islamic law. As for the calls for the incorporation of Shari'a in the state's legal systems, there are different discourses adopted by the state, ulama, secularists, and Islamists – the main political and religious actors in contemporary Muslim societies. In this debate, the Shari'a as a legal system "lost the battle" at the hands of the modernists and their new states, having been structurally dismantled "leaving behind a distorted and gradually diminishing veneer of Islamic law of personal status."[77]

Conclusions

According to both Judaism and Islam, the social, political, and legal orders should emanate from God's revealed will. Jewish and Muslim legal traditions are perceived as being historically linked to the divine covenant, building on a huge corpus of "discursive" views and legal collections throughout the centuries that encompass and regulate all aspects of human life in both the private and public spheres. As exemplified throughout this chapter, Judaism and Islam are, in the words of Neusner and Sonn, "not identical twins, they are fraternal twins. The differences take on weight, because the similarities so impress."[78]

As in the past, Jewish and Muslim legal traditions continue to define the religious experience of believers today. Since modernity, Jewish law and Islamic law – like all other legal systems – are caught up in a maelstrom, confronted with a stream of fast-moving and seemingly never-ending scientific, financial, and social developments and the ethical problems they raise. Those who choose to remain within their religious traditions can opt to reject modernity and all its trappings, seeking refuge in tradition and at times using force to maintain it. Others attempt to answer new questions by invoking older answers or applying older methods, particularly analogy. The contextualization of tradition is the most controversial route as it grants authority to new methods and/or to individuals who are at best representative of but a part of the communities to which they belong.

Notes

1 J. Neusner and T. Sonn, *Comparing Religions through Law. Judaism and Islam,* London: Routledge, 1999, p. 6.
2 G. Libson, *Jewish and Islamic Law. A Comparative Study of Custom during the Geonic Period*, Harvard Series in Islamic Law, vol. 1, Cambridge, MA: Harvard University Press, 2003; J. Jany, *Judging in the Islamic, Jewish and Zoroastrian Legal Traditions: A Comparison of Theory and Practice,* Farnham: Ashgate Publishing, 2012, esp. pp. 199–207.
3 Neusner and Sonn, 1999, p. *x*.
4 The standard reference work to date on Jewish Law is M. Elon, *Jewish Law: History, Sources, Principles*, trans. B. Auerbach and M. Sykes, Philadelphia, PA: Jewish Publication Society, 1994 and later.
5 See, for example, J. Safran, *Defining Boundaries in al-Andalus: Muslims, Christians, and Jews in Islamic Iberia*, Ithaca, NY: Cornell University Press, 2013.
6 For the waning of rabbinic authority in the nineteenth century, see I. Schorsch, *From Text to Context. The Turn to History in Modern Judaism*, Hanover and London: Brandeis University Press, 1994, pp. 9–50.
7 See J. Frishman, "True Mosaic Religion. Samuel Hirsch, Samuel Holdheim and the Reform of Judaism", in J. Frishman, W. Otten, and G. Rouwhorst (eds.), *Religious Identity and the Problem of Historical Foundation* (Jewish and Christian Perspectives Series 8), Leiden: Brill, 2004, pp. 195–222.
8 S. Lundgren, *Particularism and Universalism in Modern Jewish Thought*, Binghamton, NY: Global Publications, 2001.
9 For further details cf. W. B. Hallaq, *Shari'a: Theory, Practice, Transformation,* Cambridge: Cambridge University Press, 2009.
10 W. B. Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16/1 (1984), p. 3.
11 See W. B. Hallaq, "From Fatwās to Furūʿ: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1/1 (1994), pp. 29–65. Cf. M. Kh. Masud et al., (eds*.), Islamic Legal Interpretation: Muftis and Their Fatwa*s, Cambridge, MA: Harvard University Press, 1996.
12 Safran, 2013, p. 149. See also J. Safran, "Rules of Purity and Confessional Boundaries: Maliki Debates about the Pollution of the Christian", *History of Religions* 42/3 (February 2003), pp. 197–212.

13 See, for example, J. Skovgaard-Petersen and B. Graf, *The Global Mufti: The Phenomenon of Yusuf al-Qaradawi,* New York: Columbia University Press, 2009; S. F. Hassan, *Fiqh Al-Aqalliyyat: History, Development, and Progress*, London: Palgrave, 2013.
14 Neusner & Sonn, 1999, pp. 13–14.
15 Sayings of the Fathers 1:2.
16 For non-Orthodox women visiting the miqveh, see, for example, https://www.youtube.com/watch?v=Ln7ZZoSG9B4, accessed August 11, 2015.
17 For the miqveh as spa, see, for example, the Jacques and Hanna Schwalbe miqveh of the Upper East Side, New York City, run by the Chabad organization: https://www.youtube.com/watch?v=0LftxPnYxYM&list=PLZyJo3wEir3M2OWqIg56eJBSFKvE23WWz, accessed August 11, 2015.
18 M. Holmes Katz, *Prayer in Islamic Thought and Practice*, Cambridge: Cambridge University Press, 2013, p. 82.
19 Other Muslims have followed Al Saud and travelled in space, see C. S. Lewis, "Muslims in Space: Observing Religious Rites in a New Environment," *Astropolitics: The International Journal of Space Politics and Policy* 11/1-2 (2013), pp. 108–115.
20 E. Masood, "Muslim Council Phases in Lunar Calendar," *Nature* 443 (7 September 2006), pp. 8–9.
21 As quoted in J. Nielsen, *Muslim Political Participation in Europe*, Oxford etc.: Oxford University Press, 2013, p. 227.
22 For the prevention of cruelty to animals see Maimonides' commentary on Deuteronomy 14:21; for idolatry as the origin of this law see Moses Maimonides, *The Guide of the Perplexed*, trans. M. Friedländer, London: George Routledge, 1910, part III, Chapter 48, https://archive.org/details/guideforperplexe00maim, accessed April 2016.
23 International Standard Version online http://biblehub.com/deuteronomy/12-24.htm, accessed August 10, 2015.
24 See, for example, the website of Shechita UK, a community-wide campaign that unites representatives from the Board of Deputies of British Jews, the National Council of Shechita Boards and the Campaign for the Protection of Shechita: http://www.shechitauk.org/faq.html, as well as the guide published by the same organization: http://www.shechitauk.org/fileadmin/user_upload/pdf/A_Guide_to_Shechita_2009_.pdf; accessed August 11, 2015.
25 See C. Adams, "Muhammad 'Abduh and the Transvaal fatwa,'" The Macdonald Presentation Volume, Princeton, NJ: Princeton University Press, 1933, pp. 13–29. U. Ryad, "A Prelude to Fiqh al-Aqalliyyât: Rashîd Ridâ's Fatwâs to Muslims under non-Muslim Rule," in C. Timmerman et al. (eds.), *In-Between Spaces: Christian and Muslim Minorities in Transition in Europe and the Middle East*, Brussels: P.I.E.-Peter Lang, 2009, pp. 239–270.
26 See W. A. R. Shadid and P. S. van Koningsveld (eds.), *Islam in Dutch Society: Current Developments and Future Prospects*, Kampen: Kok Pharos, 1992, p. 13.
27 A. Black, H. Esmaeili, and N. Hosen, *Modern perspectives on Islamic law,* Cheltenham etc.: Elgar, 2013, pp. 266–267.
28 Ibid., p. 267.
29 J. Fischer, "Feeding Secularism: Consuming *Halal* among the Malays in London", *Diaspora: A Journal of Transnational Studies* 14/2-3 (2005).
30 Ibid.
31 For a similar and other stories about the rabbis and their willingness to forgive/ask for forgiveness, see bT Yoma 87b.
32 Neusner & Sonn, 1999, p. 50.
33 A. F. March, "Islamic Legal Theory, Secularism and Religious Pluralism: Is Modern Religious Freedom Sufficient for the Sharī'a 'Purpose [Maqṣid] of Preserving Religion [Ḥifẓ al-dīn]'?" *New York Law School Islamic Law and Law of the Muslim World Research Paper Series*, Paper No. 09-78 and *Yale University Public Law and Legal Theory Research Paper Series*, Paper No. 208 (2009), p. 19, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1452895, accessed March 14, 2016.
34 M. Muslehuddin, "Islamic Jurisprudence and the Rule of Necessity and Need," *Islamic Studies* 11/1 (1973), pp. 37–52; G. Weiss, *The Spirit of Islamic Law,* Athens, GA: University of Georgia Press, 1998.
35 For the various positions taken see, for example, E. Dorff, *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics*, Philadelphia, PA: Jewish Publication Society, 1998.

36 For information on contemporary Jewish practice and identity, see the 2013 PEW survey, *A Portrait of Jewish Americans* http://www.pewforum.org/2013/10/01/jewish-american-beliefs-attitudes-culture-survey/, accessed August 11, 2015.
37 See M. Ghaly, "Religio-ethical Discussions on Organ Donation among Muslims in Europe: an Example of Transnational Islamic Bioethics," *Medicine, Health Care and Philosophy* 15/2 (2012), p. 209.
38 Ibid.
39 For a list of sites and articles relating to Jewish business ethics, consult http://www.jewishbusiness.com/torah.html, accessed August 11, 2015.
40 See E. Dorff and L. E. Newman (eds.), *Jewish Choices, Jewish Voices: Money*, Philadelphia, PA: Jewish Publication Society, 2008 and other volumes in the *Jewish Choices, Jewish Voices* series; J. D. Bleich, *Contemporary Halakhic Problems*, vol 6, Newark, NJ: Ktav, 2012.
41 As quoted in Black, Esmaeili, and Hosen, 2013, p. 178.
42 Ibid., p. 178.
43 Ibid., pp. 179–180.
44 Ibid., p. 179.
45 Ibid., pp. 180–182.
46 See A. Caeiro, "The Social Construction of Sharīʿa: Bank Interest, Home Purchase, and Islamic Norms in the West", *Die Welt des Islams* 44/3 (2004), pp. 351–375.
47 Michael Satlow notes that the most common means used by American Jewish movements to clarify their borders is the issue of gender and sexuality. Cf. M. L. Satlow, *Creating Judaism. History, Tradition, Practice*, New York: Columbia University Press, 2006, p. 47.
48 The deliberations involved are available to the reader in S. Greenberg (ed.), *The Ordination of Women as Rabbis. Studies and Responsa*, New York: The Jewish Theological Seminary of America, 1988.
49 The active participation and high visibility of women – Jewish and non-Jewish – in both organized and non-organized religious movements would seem to be universal anno 2015.
50 A good introduction to women's legal position in marriage and divorce is E. Berkovits, *Jewish Women in Time and Torah*, Hoboken, NJ: Ktav, 1983.
51 Prior to the amendment (*taqqanah*) of R. Gershom (eleventh century), the wife's consent was not required. The rabbis debated at length about valid cause for divorce ranging from the wife's failure to please her husband (devoid of any specific reason) to wantonness.
52 This situation is practically universal. The United States allows clergy to act as representatives of the state with the responsibility of filling in the appropriate forms and submitting these to the local clerk's office. In this manner, civil marriage does indeed take place, albeit without a ceremony. The children born of a married woman to a man other than her husband (even if her husband has abandoned her, taken another wife, disappeared, or become mentally disturbed) are considered bastards (*mamzerim* or illegitimate) in Jewish law (as opposed to the children of an unmarried woman). *Mamzerim* are legitimate marriage partners solely for other *mamzerim*.
53 An exception in Orthodox circles was the chief rabbi of Istanbul in the early twentieth century.
54 Arguments regarding the unity of the Jewish people (*klal yisrael*) are directed most often by the Orthodox rabbinate against innovations in the non-Orthodox community. The refusal of Orthodox rabbis to recognize non-Orthodox proselytes as Jews (based in turn on the refusal of Orthodox rabbis to recognize the authority of non-Orthodox rabbis because of the latters' attitude to revelation and the limited status they attribute to halakhah) is a case at hand.
55 Calls for a boycott may be publicized, for example, by posting flyers on telephone poles and at the local supermarket.
56 For a discussion of the possibilities of annulment see E. Berkovits, *Not in Heaven. The Nature and Function of Halakha*, New York: Ktav, 1990, pp. 111–127, esp 122–123, and E. Berkovits, *Jewish Women in Time and Torah*, Hoboken, NJ: Ktav, 1983, pp. 100–106.
57 Rabbinical rulings may be changed, but uprooting biblical commandments is generally found to be unacceptable and only possible in cases of emergency. See Berkovits, 1983, pp. 47–70, and J. Roth, *The Halakhic Process. A Systematic Analysis*, New York: The Jewish Theological Seminary of America, 1986, pp. 13–48.
58 The prenuptial agreement most often included in present-day egalitarian (Conservative) *ketuboth* is the so-called Lieberman Clause accepted by the Rabbinical Assembly and the JTS in 1953. See *Moreh Derekh. The Rabbinical Assembly Rabbi's Manual*, New York: The Rabbinical

Assembly, 1998, C31-34. In the 1980s Rabbi Haskel Lookstein attempted through the New York Board of Rabbis (a Jewish ecumenical institution) to introduce a standard prenuptial agreement for marriages contracted in all congregations of the state of New York. His proposal was unfortunately rejected.

59 This is the case not only today but holds true for the past 200 to 300 years as well with the occasional rare exception. Of all the leading modern Orthodox scholars, none has defended women's rights in marriage and divorce as courageously as Rabbi Eliezer Berkovits (1908–1992). Unfortunately, his formulation of a prenuptial agreement, in which annulment would take place in cases where a man refused to give his wife a *get* despite an effectuated civil divorce, has not met widespread approval. See E. Berkovits, *T'nai Bi'N'suin u'V'Get*, Jerusalem: Mossad Harav Kook [Hebrew], 1966.

60 The use of the term *rabba* implies that women may exercise the same authority as male rabbis. To forestall negative reactions, the use of the honorary, but less controversial, title "maharat" has been suggested by some for Orthodox Jewish women trained as experts in Jewish law.

61 "Wat God verbond kan de rechter scheiden," http://www.femmesforfreedom.com/wp-content/uploads/2012/12/NRC_6_maart_20111.pdf, accessed August 10, 2015. The organization "Femmes for Freedom" was founded by Shirin Musa who received a divorce after winning a court case in Rotterdam. http://www.femmesforfreedom.com/themas/huwelijkse-gevangenschap/, accessed August 10, 2015.

62 J. L. Esposito, N. J. DeLong-Bas, *Women in Muslim Family Law*, Syracuse, NY: Syracuse University Press, 2001, p. 136.

63 T. Ramadan, *Le face à face des civilisations. Quel projet pour quelles modernité*, Lyon: Tawhid, 2001, pp. 96–104.

64 Ibid., pp. 301–307.

65 Ibid., pp. 381–386.

66 K. Abou El Fadl, *The Great Theft. Wrestling Islam from the Extremists*, San Francisco, CA: Harper, 2005, pp. 260–261.

67 Ibid., pp. 250–274: 263.

68 A. Wadud, *Inside the Gender Jihad. Women's Reform in Islam*, Oxford: One World Books, 2006, p. 16.

69 Ibid., pp. 49 and 51.

70 Ibid., pp. 168–169; 219–224.

71 Ibid., p. 182.

72 Ibid., 215. For Geiger on reform as Judaism's leading principle, see J. Frishman, *Wat heeft het christendom van het jodendom overgenomen? Abraham Geiger en de geschiedschrijving van het rabbijnse jodendom* (inaugural lecture, Catholic Theological University of Utrecht, 1999).

73 For Wadud's discussion of *Sūrat-al-Nisā'* see ibid., pp. 191, 198–202.

74 J. Plaskow, "The Right Question is Theological", in S. Heschel (ed.), *On Being a Jewish Feminist*, New York: Schocken Books, 1983, pp. 223–233.

75 J. M. Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Leiden: Leiden University Press, 2010, p. 25.

76 See W. B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*, New York: Columbia University Press, 2013.

77 W. B. Hallaq, *An Introduction to Islamic Law*, Cambridge, UK/New York: Cambridge University Press, 2009, p. 140. For more details regarding various cases, see pp. 140–162.

78 Neusner and Sonn, p. 246 (see footnote 1).

Further reading

Judaism

Elon, M., *Jewish Law: History, Sources, Principles*, trans. B. Auerbach and M. Sykes (Philadelphia, PA: Jewish Publication Society, 1994 and later). The standard reference work to date on Jewish law.

Briefer introductions to Jewish law

Dorff, E., and Rosett, A., *A Living Tree: The Roots and Growth of Jewish Law* (Albany, NY: State University of New York Press, 1988).

Hecht, N., et al. (eds.), *An Introduction to the History and Sources of Jewish Law* (Oxford: Institute of Jewish Law, Boston University School of Law/Clarendon Press 1996).

Jackson, B., "Judaism as a Religious Legal System", in *Religion, Law and Tradition. Comparative Studies in Religious Law,* ed. A. Huxley (London: Routledge/Curzon, 2002), pp. 34–48.

Reform Judaism on Jewish law

Zemer, M., *Evolving Halakhah. A Progressive Approach to Traditional Jewish Law* (Woodstock, VT: Jewish Lights Publishing, 1999).

The changing attitude of the Reform Movement toward halakhah may be traced in the works of S. B. Freehof and his successors, W. Jacob and M. Zemer. See the series on Reform responsa published by Hebrew Union College Press, commencing with:

Freehof, S. B., *Reform Responsa* (Cincinnati, OH: Hebrew Union College Press, 1960) and continued in 1963, pp. 69, 71, 74, 77, 81, and 90 (latter includes cumulative index to author's previous volumes of responsa).

Jacob, W. (ed.), *American Reform Responsa: Collected Responsa of the Central Conference of American Rabbis, 1889–1983* (New York: Central Conference of American Rabbis, 1983) followed by volumes in 1987, 1992.

For more recent responsa, see:

Jacob, W. (ed.), *Studies in Progressive Halakahah*, published by the Solomon B. Freehof Institute of Progressive *Halakhah* (Pittsburgh, PA: Rodef Shalom Press, 1991 ff.). Reform responsa and the *CCAR Combined Index to all Responsa* is available online at http://www.ccarnet.org/ (Accessed 30 April 2016).

Conservative Judaism's approach to Jewish law

For the changing view of Conservative Judaism on halakhic practice, compare the following works:

Cohen, M. (ed.), *The Observant Life* (New York: The Rabbinical Assembly, 2012).

Klein, I., *A Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary and Ktav, 1979).

Roth, J., *The Halakhic Process. A Systemic Analysis* (New York: The Jewish Theological Seminary of America, 1986).

For responsa of the Committee on Jewish Laws and Standards (sets policy for the rabbis of the Rabbinical Assembly and the Conservative Movement) see http://www.rabbinicalassembly.org/jewish-law/committee-jewish-law-and-standards

(Modern) Orthodoxy and Jewish law

Bulka, R., *Dimensions of Orthodox Judaism* (New York: Ktav, 1983).

Berkovits, E., *Not in Heaven. The Nature and Function of Halakha* (New York: Ktav, 1990).

Jewish Law. Examining Halacha, Jewish Issues and Secular Law: http://www.jlaw.com/ (Accessed 30 April 2016).

Bleich, J. D., *Contemporary Halakhic Problems*, Library of Jewish Law and Ethics (Newark, NJ: Ktav, 1977–present).

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Bleich, J. D., *The Philosophical Quest: Of Philosophy, Ethics, Law and Halakhah* (The Riets Hashkafah series) (Jerusalem: Yeshiva University Press/Koren, 2013).

A more advanced reading is Dorff, E., *To Do the Right and the Good: A Jewish Approach to Modern Social Ethics* (Philadelphia, PA: Jewish Publication Society, 2002).

Good for students are the volumes in Dorff et al.'s *Jewish Choices*, *Jewish Voices* series (Philadelphia, PA: Jewish Publication Society) on Body (2008), Money (2008), Power (2009), Social Justice (2010), Sex (2010), and War (2010).

Jewish medical ethics

Bleich, J. D., *Judaism and Healing. Halakhic Perspectives* (New York: Ktav, 1981).

Dorff , E. N., *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics* (Philadelphia, PA: Jewish Publication Society, 1998).

Dr Falk Schlesinger Institute for Medical-Halachic Research: http://medethics.org.il/siteEng/PagesEn.asp?cat_id=4&page_id=20 (Accessed 30 April 2016).

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Rosner F., *Modern Medicine and Jewish Law* (New York: Ktav and Yeshiva University, 1986).

Sinclair, D., *Jewish Biomedical Law. Legal and Extralegal Dimensions* (Oxford: Oxford University Press: 2003).

Judaism and women: basic readings

Berkovits, E., *Jewish Women in Time and Torah*, (Hoboken, NJ: Ktav, 1983).

Biale, R., *Women and Jewish Law: The Essential Texts, Their History, and Their Relevance for Today* (New York: Schocken Books, 1995).

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Broyde, M. J., *Marriage, Divorce and the Abandoned Wife in Jewish Law* (Jersey City, NJ: Ktav 2001). Available online: http://static1.squarespace.com/static/52a75d36e4b06a3e88b21253/t/52af64c0e4b01516437263b2/1387226303999/Broyde+Marriage+Divorce+and+the+Abandoned+Wife+in+Jewish+Law+%28Whole+Book%29.pdf (Accessed 30 April 2016).

Wegner, J. Romney, *Chattel or Person. The Status of Women in the Mishnah* (New York: Oxford University Press, 1988).

Islam: classical formative Fiqh and theories

Abd-Allah, U. F., *Malik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013). Analyzes the legal reasoning of early Sunni schools of law emerging during the formative period as independent legal methodologies.

Coulson, N. J., *A History of Islamic Law*, Islamic Surveys 2 (Edinburgh: Edinburgh University Press, 1964). Classic introduction to Islamic law, tracing its development from its origins, through the medieval period, to its place in modern Islam.

Hallaq, W. B., *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh*, (Cambridge: Cambridge University Press, 1997). Traces the history of Islamic legal theory from its early beginnings until the modern period. It is an essential tool for the understanding of Islamic legal theory in particular and Islamic law in general.

Hallaq, W. B., *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001). Focuses on the role of authority in the continuity and change in Islamic law and how methodological mechanisms of change were embedded in the very structure of Islamic law.

Hallaq, W. B., *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005). Provides an important historical account of how Islam had developed its own law while drawing on ancient Near Eastern legal cultures, Arabian customary law and Qur'anic reforms.

Hallaq, W. B., *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009). Discusses Islamic law in its pre-modern natural habitat and the transformation during the colonial period and includes a useful glossary of key terms and lists of further reading.

Hammad, A. Z., *Islamic Law: Understanding Juristic Differences* (Indianapolis, IN: American Trust Publications, 1992). Introduces the major principles that govern juristic differences among well-established schools of thought and well-known Muslim jurists.

Hasan, A., *The Early Development of Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1970). Attempts to survey briefly the origin, development and application of the four well-known 'roots' of Islamic law, namely the Qur'an, sunna, ijmā', and qiyās in the early manuals of Fiqh.

Ibrahim, A. F., *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015). Advanced study that presents a detailed history of Sunni legal pluralism and the ways in which it was employed to accommodate the changing needs of society by focusing on the internal logic of pragmatic eclecticism in the court systems.

Schacht, J., *An Introduction to Islamic Law* (Oxford: Clarendon, 1964). Presents a broad classical account of the present knowledge of the history and outlines the system of Islamic law.

Weiss, B., *The Spirit of Islamic Law* (Athens, GA: University of Georgia Press, 2006). Focuses on a Muslim legal science of *uṣūl al-fiqh* by analyzing the prominent features of Muslim juristic thought and its relation to the divine texts.

Modern and contemporary Islamic law

Amanat, A., and Griffel, F. (eds.), *Shari'a: Islamic Law in the Contemporary Context* (Palo Alto, CA: Stanford University Press, 2007). Examines a range of issues, from modern Muslim discourses on justice, natural law, and the common good, to democracy and the social contract in both Sunni and Shi'i Islam.

Arabi, O., *Studies in Modern Islamic Law and Jurisprudence* (The Hague: Kluwer Law International, 2001). Shows nineteenth- and twentieth-century Islamic law as a dynamic process by reflecting on the ongoing transformation of the Shari'a into the law of a nation-state.

Brown, D., *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1999). Analyses the authority of sunna and its centrality in Islamic law and traces the emergence of modern debates over sunna, focusing in particular on Egypt and Pakistan.

Peters, R., and Bearman, P. J. (eds.), *The Ashgate Research Companion to Islamic Law* (Burlington, VT: Ashgate, 2014). Provides a comprehensive and authoritative guide to Islamic law. Reflecting on past and current thinking and paving the way for future research, it introduces scholars and students to the challenges posed in the past as well as the reinterpretation and revision of established ideas in modern times.

Islamic law and ethics

Bin Sattam, A. A., *Sharīʿa and the Concept of Benefit: The Use and Function of Maṣlaḥa in Islamic Jurisprudence* (London: I. B. Tauris, 2015). Discusses the idea of *maṣlaḥa* ("general benefit" or "general interest") as a rich history within the overall framework of Islamic law.

Brockopp, Jonathan E., and Eich, Thomas (eds), *Muslim Medical Ethics: From Theory to Practice* (Columbia, SC: University of South Carolina Press, 2008). Essays present an interdisciplinary view of medical ethics in Muslim societies.

Mumisa, M., *Islamic Law: Theory and Interpretation* (Beltsville, MD: Amana Publications, 2002). Explains the theory and interpretation of Islamic law by combining ethics, epistemology, and moral philosophy.

Vogel, F., *Islamic Law and Finance: Religion, Risk and Return* (The Hague/Boston: Kluwer Law International, 1998). Describes the classical points of view of Islamic finance and the Islamic ethical economic framework set by Islamic doctrines for financiers in their transactions and business.

Islamic family law, women, and gender

An-Na'im Abdullahi, A. (ed.), *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed, 2002). Documents the scope and actual manner of application of Islamic family law worldwide and the historical challenge which Islamic societies confront in reforming personal and family law.

Esposito, J. L., and DeLong-Bas, N. J., *Contemporary Issues in the Middle East: Women in Muslim Family Law*, second ed. (Syracuse, NY: Syracuse University Press, 2001). Explores family law with regard to marriage, divorce and inheritance in the Middle East. This second edition covers family law reforms that have taken place throughout the Middle East, North Africa, and South and Southeast Asia.

Quraishi, A., and Vogel, F. E. (eds.), *The Islamic Marriage Contract: Case Studies in Islamic Family Law* (Cambridge, MA: Harvard University Press, 2008). Examines the Muslim marriage contract and includes some comparisons with Jewish and canon law and contemporary legal and social practices in the Islamic world.

Islamic penal code

Peters, R., *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge: Cambridge University Press, 2005). Discusses crimes and their punishments as laid down in Islamic law by tracing the classical doctrine and the enforcement of criminal law from the Ottoman period to the present day. It is a useful contribution for students and scholars in the field as well as for professionals looking for comprehensive coverage of the topic.

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