What Can Orthodox Judaism Learn from Islamic Traditions?

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There is an acute danger, Rabbi Samson Raphael Hirsch writes, in the Jewish people's status as a minority community with its own unique foundational texts, traditions, practices, and modes of dress and behavior. The danger is that many minorities—especially minorities that, like the Jews, view themselves as having a special role to play in unfolding historical narrative of human civilization—tend toward insularity, parochialism, and even exclusionary elitism. Certainly, the idea that Jews must carefully police the boundaries of their community in order to preserve the character and integrity of Judaism and Jewish life is strong within the rabbinic tradition. Many instances of rabbinic legislation were designed to keep Jews mindful of this fact in their social interactions with non-Jews, and to hinder Jewish adoption of non-Jewish practices and philosophies.[1] But while the careful preservation of Jewish life and tradition on its own terms is certainly necessary, it is important to keep in mind that it also entails potential pitfalls.

Rabbi Hirsch frames the problem as follows:

> There is one particular danger which is to be feared by a Jewish minority. It is what we would like to call a certain intellectual narrow-mindedness. This danger becomes especially acute the more closely a minority clings to its cause and the more anxious it is to preserve that cause. We have already pointed out that . . . a minority depends for its survival on whether it can further and foster within all its members the spirit of the cause it represents. . . . However, precisely such dedication to its cause may easily lead the minority into intellectual one-sidedness. This may well stunt to a degree the development of the minority's unique intellectual life.[2]

The critical importance of cultivating Torah scholarship and religious dedication within the Jewish community is unquestionable. At the same time, even an appropriate focus on those goals can lead—and has led—many committed and punctiliously observant Jews to regard the knowledge and experiences of those outside of our "*daled amot*" as unnecessary, worthless, disdainful, and ultimately dangerous to our spiritual and temporal lives. Rabbi Hirsch addresses this concern by encouraging Jews to "regard all truth, wherever it may be found on the outside, as a firm ally" of Torah, "since all truth stems from the same Master of Truth."[3]

Rabbi Hirsch's prescription lies at the core of various Modern Orthodox philosophies. From *Torah im derekh erets* to *Torah u'madah* and others, Judaism's religious ideal is understood to entail that traditional rabbinic teachings be combined with the very best of Torah-consistent knowledge produced outside the *bet midrash* from medicine to physics, economics, law, politics, philosophy, literature, and many others.[4] Typically, members of the Jewish community committed to this approach look to secular disciplines, to the knowledge and insights into the world and the human experience produced by the scholars, researchers, and practitioners of these fields.

Less common, however, is the interest in other faith traditions to see what insights they may have to offer to the continued development and enrichment of Jewish religious thought, practice, and lifestyles. Such hesitancy is not surprising. Jews and Judaism have a long and painful history of interactions with other religious communities, especially those under whose dominion we have lived, often as an unprotected and vulnerable minority.[5] Likewise, the Torah and rabbinic literature are filled with warnings and laws designed to distinguish between Judaism and other faiths, to separate between Jews and gentiles along

religious lines, and to distance Jews from being influenced by or adopting the teachings and practices of other religious traditions.[6] Even acknowledging all the legal niceties over whether particular faiths in their contemporary manifestations actually constitute *avodah zarah*,[7] the underlying tenor of suspicion and separation from other religions looms large.[8] Of course, Rabbi Joseph B. Soloveitchik's seminal essay, *Confrontation*, looms large in this conversation as well.[9] The Rav's strident opposition to many forms of interfaith dialogue, coupled his broader philosophy of Torah and halakha as a comprehensive, internally consistent, closed, and coherent normative system calls into question the integrity and authenticity of learning from, adapting, and integrating the insights and experiences of other faiths and religious communities into our own.[10]

II

Despite this standard hesitancy to engage other religious traditions as sources of insight into Judaism, halakha, and Jewish communal life, my own work as a scholar of Comparative Jewish and Islamic law and legal theory suggests, to me at least, that there is much value in such endeavors. Interactions between the Jewish and Islamic intellectual traditions have a long and fruitful history. The Qur'an contains many rabbinic narratives and teachings, such as the story of Avraham destroying his father's idols,[11] and the principle that "whoever kills a soul . . . it is as if he has killed all humankind; and whoever saves one soul, it is as if he has saved all humankind."[12] Moreover, while the history is murky, it is almost beyond doubt that the development of a sophisticated and systematic Islamic jurisprudence in the eighth and ninth centuries owes much to the culture of rabbinic and talmudic learning that Muslim scholars encountered following the conquest and settling of Iraq and Israel.[13] Additionally, *hadith*, or traditions about the exemplary conduct of Mohammad, have been incorporated into rabbinic texts to teach ethical principles.[14] Furthermore, the stress that medieval Sephardic halakha placed upon authenticity through *mesorah* may be product of an epistemological culture where information had to be historically accurate to be authoritative, an idea cultivated by Islamic legal theory.[15] Finally, Rambam's innovative subject classification of halakhic topics in the *Mishneh Torah* likely owes much to the thematic structure of the *furu' ul-fiqh* works written by Muslim jurists.[16]

This kind of borrowing of concepts, teachings, and methods between the Jewish and Islamic traditions is a natural and universal phenomenon. It is an instance of what Alan Watson calls “legal transplants.”[17] Although some of the norms and institutions of most legal systems are relatively fixed, all systems evolve and change, often slowly, in response to social, economic, political, cultural, and other developments. Practitioners and actors facing jurisprudential challenges in their own system often look—either intentionally or subconsciously—to the analogous successes and failures of other legal communities in addressing similar problems. Doctrines, methods, and ideas that have worked well in other comparable contexts may then be adapted and integrated to meet current concerns.[18]

To be clear, as a committed halakha-observant Jew and rabbi, I do not think that Judaism should, or even really can, uncritically adopt teachings, practices, or ideas from the Islamic tradition. I am personally sympathetic to the modest claim that rabbinic Judaism and Jewish law is best understood and implemented from an internal perspective that relies on the truths and methods embraced by its own texts and traditions.[19] At the same time, I think that a famous comment by Rabbi Dr. Isidore Twersky appropriately encapsulates a reasonable and fruitful approach to these kinds of interactions. He wrote,

> When you know your way—your point of departure and goals—then use philosophy, science, and the humanities to illumine your exposition, sharpen your categories, probe the profundities and subtleties of the *masorah* and reveal its charm and majesty; in so doing you should be able to command respect from the alienated and communicate with some who might otherwise be hostile or indifferent to your teaching as well as to increase the sensitivity and spirituality of the committed.[20]

I take Rabbi Twersky to mean that it is not only reasonable and permissible, but helpful to turn to other disciplines and other intellectual traditions as tools for problematizing, clarifying, and ultimately elevating our understanding and practice of Torah. Different thought systems in different disciplines from different times and places have grappled with similar issues in very distinct ways. In some cases, they offer novel answers to familiar questions that for a variety of reasons may not have been fully explored by the rabbinic tradition. In other instances, these “outside” sources raise previously unconsidered issues and questions relevant to our own religious practices and commitments that provide points of departure for new and enriching explorations of Torah and halakha. In both cases,

as long as we are firmly and humbly grounded in a search for meaning in Torah and rabbinic thought rather than on a quest to impose meaning from without (and to be sure, *how* to do this is no small concern, and worthy of another article in its own right), engagement with other thought systems and disciplines can enhance our Judaism.

Two brief examples can help illustrate how our understanding and practice of halakha may be enhanced and enriched by placing traditional rabbinic perspective in conversation with the experiences and insights of Islamic religious law and legal practice. The first concerns Islamic law's rich tradition of systematic legal philosophy, a discipline that is largely absent from rabbinic legal thought, but which could help address several contemporary challenges to the integrity of and public trust in halakhic decision making. The second relates to important lessons that Jews can learn from the Muslim experiences with the centralization of Islamic religious law and legal authority in government agencies, backed ultimately by the state monopoly on the use of coercive force to enforce the law.

III

Very early in Islamic legal history, Muslim jurists developed highly systematic ways of thinking about Islamic religious law in jurisprudential terms.[21] Systematic jurisprudential analysis is largely absent from traditional rabbinic writings; there are a variety of reasons for this, the exploration of which is beyond the scope of this short piece. Unlike the rabbinic tradition, the kinds of questions and concerns associated with what we in the West call legal philosophy, or what Muslim scholars call *usul ul-fiqh* (the roots of [legal] understanding) are central to Islamic legal though and practice. As a result, the Islamic tradition has a rich literature considering questions such as what is the relationship between God's law and revelatory sources; what makes a source of law authoritative; how does one know that a source is authoritative; what determines the meaning of a material or rational source of law; how does one know what a particular source means; what is the relationship between God's law and human understandings of God's law; is human reason a legitimate source of law; what kinds of analytic and interpretive methods provide a reliable cognitive bridge between God's law and Man's mind; what makes a legal opinion a legitimate basis for religious practice; what is the relationship between law and language, law and ethics, law and custom, law and the coercive powers of government?[22]

These are important questions. They are questions that, if applied to halakha, go to the very heart of many contemporary debates within the observant Jewish world about what halakha is, how it works, and what halakhic authorities, communities, opinions, and modes of practice can be regarded as legitimate within the rubric of *eilu v'eilu divrei Elokim hayyim*. Of course, we can and have constructed responses to many of these concerns from the perspective of rabbinic thought by drawing on widely dispersed talmudic and midrashic teachings,[23] *kelalei horaah*,[24] codified prescriptions in *Mishnah Torah, Arbah Turim, Shulkhan Arukh*,[25] and helpful glimpses into the legal methodologies and theories of prominent *posekim* gleaned from rabbinic responsa.[26] Rabbinic treatments of these issues rarely manifest as systematic responses to particular jurisprudential questions, however. They do not evince comprehensive theory of what halakha is and how halakha works.[27]

As mentioned earlier, there are good internal reasons why halakhic scholars have been largely unconcerned with developing any systematic jurisprudence. Nevertheless, at least today, the failure to do so is at least partly responsible for poor understandings of the internal logic and simultaneously principled and pragmatic methods of halakhic decision making. Moreover, the lack of a comprehensive halakhic legal philosophy contributes to popular deprecations of contemporary halakhic decision making, especially in "hard cases"—such as *igun*, women's ritual, industrial *kashruth*, *geirut*, and others—as political, subjective, and unprincipled.[28] It is true, to be sure, that developing halakhic doctrine in these and other fields entails substantial considerations of policy in addition to the formal application of rules;[29] and it is true, too, that halakhic judgment almost always entails a measure of subjectivity, whether in the apprehension and classification of relevant facts, the assessment of sources, or the analyses and application of texts.[30] But this does not also mean that halakhic decision making is necessarily unprincipled, arbitrary, or illegitimate. Other legal systems developed systematic approached to jurisprudence as responses to just these kinds of concerns.[31] The ways in which Islamic legal theory addresses these issues can be particularly adaptive and helpful in the halakhic context, since the workings of both systems—grounded in both textual and oral revelation, eternally relevant for their adherents, legally binding but not typically formally enforceable, decentralized, etc.—are so similar.

IV

Many observers associate Islamic religious law with the kinds of strict regulations and harsh punitive practices of modern Muslim-majority states such as Saudi Arabia, Iran, and Pakistan. These countries do, of course, present themselves as Islamic states governed by *Shari'a* law,[32] but viewed in historical context the marriage of religious legal authority and government power exemplified by these nations departs substantially from traditional relationships between law, politics, and religion in Islamic societies. For much of Islamic history, religious law and political power were kept separate from each other.[33] Islamic religious norms were formulated by scholars and jurists, or *fuqaha*, working privately or under the patronage of charitable trusts known as *waqf*s, which supported schools, mosques, and educational chairs.[34] While the judges who staffed religious courts were indeed paid by the ruler, they did not apply laws made by the sultan or local prince, but relied on the doctrinal rulings and scholarship produced by the *fuqaha* who typically avoided entanglements with the government.[35] In this context, local rulers routinely supported a plurality of religio-legal norms; several different religious courts, each representing one of the several distinct schools of Islamic jurisprudence, typically coexisted in any given jurisdiction at the same time, and Muslim citizens were free to bring their cases to whichever courts they wished.[36] Moreover, matters of private religious practice—things we would classify as *mitzvoth bein adam l'Makom*—were usually beyond the jurisdiction of the courts entirely. When individual Muslims had religious questions—about what to eat, how to pray, when to fast, whom to marry, or how much charity to give—they asked for and received *fataawa*, or legal opinions from whichever religious scholar they happened to identify with at the time.[37] The state did make law, to be sure, but it neither controlled religious legal scholarship nor determined the right answers to religious questions.[38] The role of government was understood to be limited to areas of policy and discretion left unregulated by religious standards.[39]

This changed drastically beginning in the early sixteenth century, when the Ottoman sultans sought to consolidate and unify their large empire by controlling Islamic religious law. They began by adopting the doctrinal positions of only one of the four schools of Sunni Muslim jurisprudence, the Hanafi school, as the official law of the empire.[40] They also appointed Hanafi jurists to newly created positions as official legal authorities for cities, provinces, and the entire empire. By marrying religious and political authority, the Ottoman sultans were able to harness the religious commitments of their Muslim subjects to reinforce their own power.[41] Whereas Islamic religious law and practice had previously been pluralistic, decentralized, private, and largely voluntary, under the Ottomans it became centralized and hierarchical, unitary, and subject to coercive government

enforcement.

For a variety of reasons associated with the rise of Wahhabism and similar ideologies as a religious movement in eighteenth-century Arabia, the experiences of Muslim societies with European colonial powers and colonial law, and economic and the geopolitical circumstances under which many Muslim states gained independence during the twentieth century, many Muslim countries continued the trend toward the centralization of religious authority in government functionaries begun by the Ottomans.[42] Today, almost every Muslim country from Morocco to Malaysia has adopted some aspects of Islamic law—usually religious family and personal status laws—as the law of the state.[43] Some countries, such as Saudi Arabia and Iran, have gone farther, adopting at least in name the entirely of Islamic religious law as state law.[44] In doing so, however, these countries have qualitatively changed the traditional way Islamic law operated, and have created a strange hybrid of religious doctrine, politics, and state policy.

In most cases, these changes have brought substantial problems to the Islamic religion, Muslim citizens and religious adherents, and the states themselves. When religious law and observance existed independent of state power, religion and government operated in delicate balance, providing mutual checks on extremism in either sphere. Islamic law was dynamic, pragmatic, and adaptable; divorced from state control, there did not have to be a single official answer to most legal questions. Instead, jurists of different school of Islamic thought offered a range of alternative avenues for legitimate religious observance that Muslims were largely free to adopt or reject on a voluntary basis. This encouraged scholars to be responsive to local and temporal economic and social concerns, promoting congruity between religious law and life. State control over religious authorities and religious legal norms substantially undermined many of these positive characteristics. In their stead, Islamic religious law in the coercive hands of government has become formalistic and unresponsive to real world conditions, and has come to be viewed by many as draconian, repressive, and distinctly unworthy of respect or reverence.[45]

The Jewish people, too, are currently contending with questions related to the centralization of religious authority, and the relationship between halakha and government power in a Jewish state.[46] Any casual observer of Israeli religious politics is familiar with at least some of the issues that revolve around the official Israeli rabbinate, and in particular its government mandate of bureaucratic control over marriage, divorce, personal status, conversion, *kashruth*, and a variety of other issues related to the intersection of halakha and public life in Israel. Numerous articles and personal testimonies have suggested that this

centralization and coercive enforcement of particular understandings of Jewish law have negatively impacted many Israeli's and Jews' respect for Judaism, halakha, and religious leadership.[47]

The issue is not limited to Israel. In the United States, too, there is substantial discontent, cynicism, and distrust with attempts to create centralized, uniform halakhic standards in areas like *kashruth* and *geirut*. Uniform policy, consistency, the establishment of best practices, predictability, and oversight are, to be sure, only some of the benefits of more centralized, organized, and uniform standards of halakhic practice.[48] But there are drawbacks as well.[49] Uniformity and centralization of religious authority and standards makes it harder for properly committed but unique and independent-minded members of our communities to find contexts conducive to their religious growth. Formal policies and bureaucratic regulatory processes also leave many halakhically legitimate modes of practice outside the mainstream. Although this is problematic in its own right, it has the added detriment of potentially contributing to a stagnation of creative and enriching developments in Jewish thought and halakhic practice. Several authorities have noted the importance of preserving non-normative viewpoints in order to maintain the potential for alternative modes of practice when circumstances call for it, *l'fi haMakom v'haZeman*. This becomes more difficult when religious standards are set from the top down, and communities and rabbinic leaders are expected to conform in order to situate themselves within broader centralized frameworks.

As we grapple with such issues, it may be helpful to look beyond our own *daled amot* to the experiences of other communities with characteristics similar to our own that have also experimented with various forms of centralized religio-legal authority and associations between religious law and state power. The Muslim example is a powerful one. Of course, the two situations are not exactly the same; important historical, cultural, political, and sociological differences urge thoughtfulness and caution in drawing uncritical conclusions about how Jews should think about these issues. Nevertheless, it is helpful to expand our horizons and consider what we can learn from others—even from other faith communities, including the Islamic tradition. If we are clear about our own commitments and objectives, we can use such interactions to enhance Jewish life and practice, raising the esteem of Torah and God in the process.

[1] Such laws include the prohibition on *bishul akum*, food cooked by a non-Jew, which the rabbis instated at least in part as a measure to limit the ease with which Jews could interact socially with non-Jews in order to prevent intermarriage. *See* Mishnah, *Avodah Zarah* 2:6; Tosafot, *Avodah Zarah* 38a, s.v. *elah m'derabanan*; Taz, *Yoreh Deah* 113:7. *But see* Rashi, *Avodah Zarah* 38a, s.v. *m'derabanan* (explaining the prohibition as designed to prevent Jews from accidentally eating non-Kosher food). Likewise, the rabbinic prohibition of *stam yeinam*, which forbids Jews from consuming uncooked wine handled by non-Jews (or perhaps only idolaters) out of concern that being able to easily drink together will lead to social interactions and familiarity that can end in intermarriage. *See* Talmud Bavli, *Avodah Zarah* 36b*; Shulkhan Arukh, Yoreh Deah* 124:7. Such rabbinic restrictions build on biblical warnings against Jews being overly familiar or friendly with Canaanite nations or marrying into their families. *See Devarim* 7:2–3. *See also* Talmud Bavli, *Avoda Zarah* 20a.

[2] R. Samson Raphael Hirsch, *The Collected Writings of Rabbi Samson Raphael Hirsch*, II, pp. 246–247 (Feldheim 1997).

[3] R. Samson Raphael Hirsch, *The Collected Writings of Rabbi Samson Raphael Hirsch*, II, p. 248 (Feldheim 1997).

[4] *See, e.g.*, R. Samson Raphael Hirsch, *The Collected Writings of Rabbi Samson Raphael Hirsch*, VII, pp. 81–101 (Feldheim 1997); R. Norman Lamm, Torah Umadda: *The Encounter of Religious Learning with Worldly Knowledge in the Jewish Tradition* (1994); Max Levy, *From Torah im Derekh Eretz to Torah U-Madda: The Legacy of Samson Raphael Hirsch*, 20 Penn. History Rev. 72 (2013); R. Jonathan Sacks, *The Great Partnership: Science, Religion, and the Search for Meaning* (2014).

[5] *See* Mark R. Cohen, *Under Crescent and Cross: The Jews in the Middle Ages* (2008); Barnard Lewis, *The Jews of Islam* (1984); James Carroll, *Constantine's Sword: The Church and the Jews* (2002).

[6] *See, e.g.*, *Devarim* 7:25–26; *Devarim* 11:16; Talmud Bavli, *Yevamot* 76b; Talmud Bavli, *Shabbat* 17b; Talmud Bavli, *Avodah Zarah* 36b; Rambam, *Sefer HaMitzvot*, *Lo Ta'aseh* no. 52; Rambam, *Mishnah Torah*, The Laws of Forbidden Foods 17:9; *Sefer Mitzvot HaGadol*, *Lavin* no. 112; *Sefer HaChinuch*, no. 427; R. Samson Raphael Hirsch, *Commentary on the Torah, Devarim* 11:16; 18

Encyclopedia Talmudit 362–366 (1986).

[7] *See* Alan Brill, *Judaism and Other Religions: Models of Understanding,* pp. 175–206 (2010).

[8] *See* Alan Brill, *Judaism and World Religions: Encountering Christianity, Islam, and Eastern Traditions*, pp. xii–xiv (2012).

[9] *See* R. Joseph B. Soloveitchik, *Confrontation*, 2 Tradition 5 (Spring–Summer 1964).

[10] For an extensive discussion on Rabbi Soloveitchik's *Confrontation*, see the proceedings of "Rabbi Joseph Soloveitchik on Interreligious Dialogue: Forty Years Later," a conference held at Boston College on Nov. 23, 2003. The materials presented at this meeting are available at http://webcache.googleusercontent.com/search?q=cache:cNTj0Bz_n2QJ:www.bc.edu/conte .

[11] *See* Qur'an 21:51–71; *Midrash Rabbah* 38:13. *See also* Abraham Geiger, *Judaism and Islam,* 96–99 (1970).

[12] Qur'an 5:32. *See also* Mishnah, *Sanhedrin* 4:5.

[13] *See, e.g.*, Judith Rmoney Wegner, *Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and their Talmudic Counterparts*, 26 Am. J. Leg. Hist. 25 (1982); Joseph David, *Legal Comparability and Cultural Identity: The Case of Legal Reasoning in Jewish and Islamic Traditions*, 14 Electronic J. Comp. L. (2010), http://www.ejcl.org/141/art141-2.doc.

[14] See, for example, R. Bachya ibn Pakudah, *Hovot Halevavot*, *Shaar Yichud Hamaaseh*, ch. 5, p. 23 (Moses Hyamson, transl. 1962), which records a famous *hadith* in which Mohammad—ibn Pakudah refers to the protagonist as "a pious man"—says to a group of companions returning from a battle, "you arrived with an excellent arrival, for you have come from the lesser struggle [war] to the greater struggle—the struggle of a servant of Allah against his own desires." While this *hadith* is often used and repeated, it does not appear in any of the major canonical *hadith* collections, and has been widely regarded as either forged or of weak authenticity by Muslim jurists. *See* Ibn Taymiyyah, *al-Furqan Bayna*

Awliya, ch. 9. *See also* Joel L. Kraemer, "The Islamic Context of Medieval Jewish Philosophy" 71, in *The Cambridge Companion to Medieval Jewish Philosophy* (Daniel H. Frank & Oliver Leaman eds., 2003); Rabbi Norman Lamm, Torah Umadda: *The Encounter of Religious Learning with Worldly Knowledge in the Jewish Tradition* 22 (1994).

[15] This observation is yet to be fully explored. For a brief introduction to differences between classical Ashkenazic and Sephardic jurisprudence, see Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* 45–123 (1997). Also of interest is a series of lectures given by Rabbi Dr. Jeffrey Woolf entitled, *Between Ashkenazic and Sefardic Rishonim 1–3*, available at http://www.yutorah.org/sidebar/lecture.cfm/800711/rabbi-dr-jeffrey-woolf/between-ashkenazic-and-sefardic-rishonim-part-1-/. For an overview of Islamic jurisprudence, which in many respects corresponds to the classical Sephardic approach to the nature of law and legal decision making, see Shlomo Pill, *Law as Engagement: A Judeo Islamic Conception of the Rule of Law for Twenty-First Century America* (Dissertation, Emory University School of Law, 2016).

[16] *See* Sarah Pessin, "The Influence of Islamic Thought on Maimonides," in *The Stanford Encyclopedia of Philosophy*, https://plato.stanford.edu/entries/maimonides-islamic/; Sarah Stroumsa, *Maimonides in His World: Portrait of a Mediterranean Thinker* 61–69 (2011); Shlomo C. Pill, *Law as Faith, Faith as Law: The Legalization of Theology in Islam and Judaism in the Through of al-Ghazali and Maimonides*, 6 Berkley J. Middle East. & Islamic L. 1 (2014).

[17] *See* Alan Watson, *Legal Transplants: An Approach to Comparative Law* (1974).

[18] For a recent review of various responses to Watson's work, see John W. Cairns, *Watson, Walton, and the History of Legal Transplants*, 41 Ga. J. Int'l & Comp. L. 637 (2013).

[19] For an excellent review of various expressions of the idea that Judaism in general, and Jewish law in particular is a closed system that is internally coherent, comprehensive, and complete see Hillel Charles Gray, *Foreign Features in Jewish Law: How Christian and Secular Moral Discourses Permeate Halakha* 50–116

(Dissertation, University of Chicago, 2009). Strong versions of this claim are reminiscent of some forms of Western legal formalism, which held that legal systems are metaphysically objective normative entities constituted by their respective customs, constitutions, statutes, and judicial decisions, and which are comprehensive, complete, and internally coherent. *See generally* Martin Stone, *Formalism* 166, 167–170, in *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Jules Coleman & Scott Shapiro eds., 2002). My own tentative view of the internal logic of halakha is more in line with some features of Dworkinian integrative jurisprudence in that the rabbinic law has a very substantial corpus of core texts and traditions of interpretive and analytic methods that must be respected and within which credible halakhic decision making must work.

[20] Rabbi Dr. Yitzchak Twersky, *The Rov*, 30 *Tradition* 14, 34 (1996).

[21] Muhammad ibn Idris al-Shafi'i (767–820 ce) is often credited as being the "father" of Islamic jurisprudence based on his authoring the work, *al-Risala*, one of the earliest systematic treatments of jurisprudential issues in Islamic law. *See* Wael B. Hallaq, *Was al-Sahfi'i the Master Architect of Islamic Jurisprudence?*, 25 Int. J. Middle East Stud. 587 (1993). In truth, Muslim jurists were grappling with major questions in legal philosophy for many decades before al-Shafi'i. These early debates, which sprang up only decades after the death of Mohammad in 632 ce, lead to a major jurisprudential split between two schools of thought, the *ahl al-hadith*, or "traditionalists" who thought that Islamic norms must be derived by near exclusive reliance on the *Qur'an* and *Hadith*, which they regarded as reliable indicators of the divine law revealed to the Muslim community by God through the Prophet, and the *ahl al-ra'y*, or "rationalists," who argued in favor of using human reason, including analogical reasons and even purely pragmatic policy-making as sources of religious law. Al-Shafi'i's jurisprudential work is credited with bridging the traditionalist-rationalist divide, thus providing a more unified basis for the subsequent development of Islamic legal philosophy.

[22] For a comprehensive treatment of Islamic jurisprudence, see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (2003).

[23] *See, e.g.*, Babylonian Talmud, *Eruvin* 13b; Babylonian Talmud, *Hagigah* 3b; Babylonian Talmud, *Bava Metzia* 59b; Babylonian Talmud, *Sanhedrin* 34a; *Sifrei, Shoftim* § 154; *Tana D'bei Eliyahu Zuta*, ch. 2.

[24] *See, e.g.*, R. Malachi Hakohen, *Yad Malachi*; R. Haim Hizkiyah D'medini, *Sedei Hemed*, Vol. 9, *Kelalei Haposkim*; Shach, *Kitzur B'Hanhagat Horaat Issur V'hetter*; R. Yitzhhak Yosef, *Ein Yitzhak*.

[25] *See, e.g.*, Rambam, Introduction to *Mishnah Torah*; *Shulhan Arukh, Yoreh Deah* 242; *Shulhan Arukh, Hoshen Mishpat* 25:1–2.

[26] *See, e.g.*, Rashi, *Ketubot* 57a, s.v., *ha kamashmah lan*; Derashot Ha'ran, no. 7;; Maharal, *Be'er Hagolah* 1:5; Introduction to *Milhemet Hashem*; Introduction to *Ketzot Hahoshen*; Introduction to *Netivot Hamishpat*; Introduction to *Igrot Moshe: Orah Hayyim* I.

[27] One rare exception to this is Maharitz Chayes, *Darkhei Hahoraah*. The *Mishpat Ivri* movement has led to some contemporary Jewish law scholars taking a greater interest in systematic jurisprudence, *see, e.g.*, R. Isaac Herzog, *The Main Institutions of Jewish Law* (2 vols., 1965); Menahem Elon, *Jewish Law: History, Sources, Principles* (4 vols., 1994), but this is still an underdeveloped field within traditional rabbinic literature.

[28] *See, e.g.*, Blu Greenberg, *On Women and Judaism: A View from Tradition* 44 (1981); Sussana Heschel, *On Being a Jewish Feminist: A Reader*, p. xiv (2d ed. 1995); Aaron Koller, *Women in Tefillin and Partnership Minyanim*, The YU Commentator (February 2, 2014).

[29] *See* R. Moshe Shmuel Glassner, *Dor Revi'i* 3 (1978); Chaim I. Waxman, *Toward a Sociology of Pesak* 217, in *Rabbinic Authority and Personal Autonomy* (Moshe Z. Sokol ed., 1992). For talmudic examples of including broader concerns of religious policy in halakhic decision making, see Babylonian Talmud, *Shabbat* 12b; Babylonian Talmud, *Bava Metzia* 91b. *See also Shulhan Arukh, Hoshen Mishpat* 2:1–2. For a more formalistic approach that is skeptical of policy considerations not explicitly endorsed from within the halakhic corpus itself, see J. David Bleich, *Where Halakha and Philosophy Meet* 126 ("In . . . halakhic decision-making . . . the result lies in whatever direction halakhic reasoning dictates. Policy decisions and the like dare not be permitted to intrude.").

[30] *See* Aaron Kirshenbaum, *Subjectivity in Rabbinic Decision Making* 93, in *Rabbinic Authority and Personal Autonomy* (Moshe Z. Sokol ed., 1992).

[31] *See generally* Shlomo C. Pill, *Law-as-Engagement: A Judeo-Islamic Conception of the Rule of Law for Twenty-First Century America*, pp. 18–57 (Dissertation, Emory University, 2016).

[32] *See* The Constitution of Pakistan, *Preamble*; The Constitution of Saudi Arabia, Ch. 1, Art. 1 ("the Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution . . ."); Constitution of Iran, Art. 1.

[33] *See* Knut S. Vikor, *Between God and the Sultan: A History of Islamic Law* 185–187 (2005); *See* Khaeld Abou el Fadl, *Islam and the Challenge of Democratic Government*, 27 Ford. Int'l L.J. 4, 26–27 (2003–2004).

[34] *See id.* at 140–167.

[35] *See id.* at 1–11. *See also* Imam Khassaf, *Adab al-Qadi* 23–35 (2004).

[36] *See* Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* 159–196 (2009).

[37] *See* Knut S. Vikor, *Between God and the Sultan: A History of Islamic Law* 141–143 (2005).

[38] *See* Khaled Abou el Fadl, *Rebellion and Violence in Islamic Law* 90–99 (2001); Wael B. Hallaq, *The Origins and Evolution of Islamic Law* 178–193 (2005).

[39] *See* Khaeld Abou el Fadl, *Islam and the Challenge of Democratic Government* , 27 Ford. Int'l L.J. 4, 31 (2003–2004).

[40] *See* Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* 197–222 (2009); Knut S. Vikor, *Between God and the Sultan: A History of Islamic Law* 206–221 (2005).

[41] *See id*. For a discussion of this phenomenon specifically in the context of the Saudi alliance with Wahhabism see Khaled Abou el Fadl, *The Great Theft: Wrestling Islam from the Extremists* 26–94 (2007).

[42] *See generally* Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* 371–499 (2009).

[43] *See, e.g.*, Lama Abu-Odeh, *Modernizing Muslim Family Law: The Case of Egypt*, 37 Vanderbilt J. Trans. L. 1043 (2004).

[44] *See* Frank Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (2000); Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* 482–493 (2009).

[45] For an example of how one prominent Muslim jurist, Shihab al-Din al-Qarafi (1228–1285), conceptualized and grappled with the relationship between religious law and authority on the one hand, and state power on the other, see Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihab al-Din al-Qarafi* (1996).

[46] Of course, rabbinic and academic engagement with this issue has been taking place since the mid-1800s, when Diaspora Jewry began to take seriously the eventuality of a Jewish national state in the Land of Israel. For some examples of rabbinic engagement with these issues, see R. Ovadya Hedaya, *HaTorah V'Hamedinah* (1958); R. Yitzchak Isaac Halevi Herzog, *Tehukah L'Yisrael Al Pi Hatorah*, 3 vols. (1989); R. Shlomo Goren, *Torah Hamedinah (*1996). Of course, rabbinic consideration of this issue did not begin with modern Zionism, and many Rishonim considered such issues as well. *See, e.g.*, Rambam, *Mishneh Torah*, *The Laws of the Sanhedrin*; *id. The Laws of Kings and Their Wars*; R. Nissin Gerondi, *Derashot HaRan*, no. 11. For a secondary treatment of rabbinic engagement with this issue, see Suzanne Last Stone, *Religion and State: Models of Separation from within Jewish Law* 6 Int'l J. Const. L. 631 (2008).

[47] *See, e.g.*, Arye Edrei, *Identity, Politics, and Halakha in Modern Israel*, 14 J. Mod. Jew. Studies 109 (2015); Michele Chabin, "Top U.S. Rabbis Not Kosher Enough for Israel's Chief Rabbinate," *The Jewish Week* (Sept. 23, 2016); R. Marc. D. Angel, "Re-Think the Israeli Chief Rabbinate," *The Jerusalem Post* (May 28, 2007); Sara Toth Stub, "Israeli Restaurants Are Working Around the Rabbinate's Kosher Certification Stronghold," *Tablet Magazine* (July 14, 2016); Judy Maltz, "A Single Mother Takes on the Chief Rabbinate," *The Forward* (July 6, 2015), http://forward.com/sisterhood/311520/a-single-mother-takes-on-the-chief-rabbinate/.

[48] *See* Rabbi Shmuel Goldin & Rabbi Leonard Matanky, “Defending RCA’s Conversion Policy: An Open Letter to Rabbis Marc Angel and Avi Weiss,” *The New York Jewish Week* (December 21, 2016), http://jewishweek.timesofisrael.com/defending-rcas-conversion-policy-2/.

[49] *See* Avi Weiss & Marc Angel, “Op-Ed: Centralizing Authority on Conversions Hurts Converts,” *Jewish Telegraphic Agency* (Nov. 13, 2014), http://www.jta.org/2014/11/13/news-opinion/opinion/op-ed-centralizing-authority-on-conversions-hurts-converts-1.