

*Islamic and Jewish Legal Reasoning: Encountering Our Legal Other*. Edited by Anver M. Emon. London: OneWorld, 2016. Pp. 304. \$30.00 (paper). ISBN: 978-1780748801.

Laws of religions can be compared in many different ways. Comparing some legal institutions and trying to identify differences and analogies is the simplest one. That is what Jacob Neusner and Tamara Sonn did with reference to Jewish and Islamic law.<sup>1</sup> Anver Emon, Matthew Levering, and David Novak follow a more complex model in their *Natural Law: Jewish, Christian, and Islamic Trialogue*, where each author discusses the topic of natural law from the angle of a specific religious tradition and provides some comments on the presentations offered by the other authors.<sup>2</sup> Norman Doe, who examines the laws of different Christian denominations, adopts a third pattern, drawing from their comparison some shared general principles that can help interreligious dialogue.<sup>3</sup> In compiling *Islamic and Jewish Legal Reasoning: Encountering Our Legal Other*, editor Anver Emon proposes yet another comparative methodology, this one based on the reading of Jewish and Islamic legal texts and on the ensuing dialogue between scholars of these two religious and legal traditions.

Each of these comparative approaches has its own strengths and weaknesses, and each should be evaluated according to the goals it wants to attain. In their introduction to *Islamic and Jewish Legal Reasoning: Encountering Our Legal Other*, Emon and contributor Robert Gibbs explain the reasons underlying the choice of approach for this volume. Their reading of the Jewish and Islamic texts is not driven by the aim of “reducing the two traditions to a common ground” (xiv), but rather by the intent to explore a key hypothesis underlying the whole book: “how might we better appreciate the traditions that we study if we also study the tradition of our ‘other’” (xvii). This point had already been made by Neusner and Sonn, who open their book with Max Müller’s famous dictum, “Who knows only one religion knows no religion,”<sup>4</sup> and it reflects the intuition implicit in many writings of Adam Seligman, another contributor to the Emon volume under review. Seligman argues that the aim and value of the dialogue between different cultural and religious traditions does not consist in overcoming differences but in accepting them as the path to and the tool for developing the ability of “living with difference,” the title of a book he recently published.<sup>5</sup>

The dialectics between reason and authority—the authority of the sacred texts on the one hand and the reasoning of the legal expert on the other—is the ground chosen to test how much this particular comparative approach is effective in strengthening the understanding of one’s religion, culture, and history through the study of the history, culture, and religion of his or her “other.” The sacred texts, based on the authority of divine law, are constantly interpreted by scholars who make use of their reason to understand them and adapt them to the changing needs of a community. The interplay between text and interpretation allows the reader to recognize the role played by rational

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- 1 Jacob Neusner and Tamara Sonn, *Comparing Religions through Law: Judaism and Islam* (London: Routledge, 2002).
  - 2 Anver M. Emon, Matthew Levering, and David Novak, *Natural Law: A Jewish, Christian, and Islamic Trialogue* (Oxford: Oxford University Press, 2014).
  - 3 Norman Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013).
  - 4 Neusner and Sonn, *Comparing Religions through Law*, 1.
  - 5 Adam B. Seligman, Rahel R. Wasserfall, and David W. Montgomery, *Living with Difference: How to Build Community in a Divided World* (Oakland: University of California Press, 2015).

inquiry within two legal and religious traditions that are grounded on the authority of God's will and to challenge the widespread "presumption that any assertion of authority in these traditions must be irrational, thus demanding that we choose between *either* reason *or* authority" (xvi).

The introduction is followed by five chapters that explore the dialectics between reason and authority in five different legal areas: the adjudication of disputes, the relations between men and women, the responsibility towards animal suffering, the control exercised over female sexuality by women, and the issue of sovereignty. The first three chapters use the same structure, reproducing Jewish and Islamic legal text, around which two scholars (one for each legal tradition) debate. The final two contributions are each written by single authors, one an expert in Judaism and the other in Islam and, like the previous chapters, revolve around the examination of legal texts. However, they are structured as if jointly authored by *two* scholars, without any possibility of identifying the specific contribution of one author or the other.

All the chapters are the outcome of an ongoing dialogue that involved about twenty scholars who regularly met at the University of Toronto between 2007 and 2011. Each meeting followed the same procedure: An expert on Jewish law explained an Islamic text and an expert on Islamic law explained a Jewish one, so that "scholars of one tradition could not help but encounter their other amid the internal library of their own tradition" (xx). According to Emon and Gibbs, this working method was helpful to attain the "dialogical" goal of the legal comparison, because "To introduce a textual other was not to abandon or forgo one's expertise, but to allow all of us to reflect on how such an encounter with difference had the potential to raise new questions about things that we assumed we knew or believed about what we considered both as familiar and as foreign" (xxi).

The two final chapters of the book discuss the implications for scholarship that the whole research project presents in light of the relation between philosophical reflection and legal inquiry (Gibbs) and the centrality of the notion of tradition (Seligman). As underscored by Adam Seligman in his chapter, the book's uniqueness and value do not consist so much in the new knowledge it provides, but rather in the methodology of comparison it proposes. At its center, there are the notions of dialogue and tradition, "something that is passed down from the past to the present" (221). Tradition is embodied in the classical Jewish and Islamic texts that are examined and discussed. Through this interpretive effort, the texts become a bridge between reason and authority. Traditions are also the subject of dialogue—guided by the principle that deepening the understanding of one's tradition is the precondition to understand the tradition of the other.

The insistence on tradition and dialogue is one way, but not the only possible one, to reconsider legal comparison in the light of the needs of our contemporary societies, dominated by the search for strategies and tools for "living with difference."<sup>6</sup> In this context, the comparison of different religious legal systems can be helpful for at least three reasons. First, religious identities, like all identities, are "defined by relation to differences: if we do not know exactly what distinguishes us from the others, we are not able to find what unites us in a collective 'we.'"<sup>7</sup> Second, state laws are increasingly called to regulate issues (such as proselytism, blasphemy, apostasy, and mixed marriages) that cannot be correctly understood without a preliminary comparative examination of how they are dealt with in each religious legal system. Third, religious laws are "a mirror

6 This is also the title of a 2015 report published by the Commission on Religion and Belief in British Public Life. Commission on Religion and Belief in British Public Life, *Living with Difference: Community, Diversity, and the Common Good* (December 2015), <http://www.woolf.cam.ac.uk/assets/file-downloads/Living-with-Difference.pdf>.

7 Sergio Ferlito, *Le religioni, il giurista e l'antropologo* (Soveria Mannelli: Rubbettino, 2005), 75 (author's translation).

universe of constitutional law” and, long before constitutional law came into existence, have devoted much attention to “the laws of others,” engaging “with the outer legal universe.”<sup>8</sup> As underscored by Ran Hirschl, ignoring this wealth of reflections means overlooking the “potential values of legal concepts developed within religious law to meeting the challenge of encounters with foreign law.”<sup>9</sup>

Exactly for this reason, one point of Emon’s and Gibbs’s introduction raises some doubts. It concerns the motives that are adduced to explain the exclusion of Canon law from the comparison with Jewish and Islamic law. My doubts do not include the practical reasons for focusing the attention only on Jewish and Islamic law. The similarities between Jewish and Islamic law make their comparison much easier, and the value of comparison does not lie in the number of legal systems that are taken into consideration. However, the exclusion of Canon law is explained with reasons that are not convincing and risk creating misunderstandings affecting the comparison of religious laws in its entirety. First of all, Emon and Gibbs mention that “some scholars of Islam and Judaism . . . considered the *sola scriptura* model of legal reasoning as too indebted to a Protestant tradition to embrace the salient role of the interpretive tradition in Judaism and Islam” (xiv). This opinion overlooks that the *sola scriptura* doctrine (which according to the Protestants themselves does not exclude the existence of other authorities) is not the doctrine of the Roman Catholic Church or the Orthodox churches. They recognize the sacred scriptures’ authority *and* that of the tradition and of the teachings of the church. Within this shared interpretive tradition, there are differences with Judaism and Islam, but they are not so important as to prevent the comparison of the three religious legal systems. The second reason they offer for excluding Canon law has a more solid foundation but is not decisive. Emon and Gibbs write that, in its Christian version, “Scriptural Reasoning often prioritized theology over and against other fields of inquiry, specifically the legal field that features so prominently in both Judaism and Islam” (xiv). It is true that, starting from the sixteenth century, the emphasis has shifted from law to theology,<sup>10</sup> but this shift did not result in the disappearance of law from the life of the Christian communities. The “long tradition of canon law,” which Emon and Gibbs themselves cannot but recognize (xiv), continues to be vital up to our days. Again, it has different characteristics from the Jewish and Islamic legal tradition: for example, the Canon law of the Roman Catholic Church has been codified three times in the last century, while there is no modern code of the Jewish and Islamic law. But these differences are exactly what should be compared and explained. The third reason offered for exclusion of Canon law is a little more complex. “This new project,” Emon and Gibbs write, “grew out of an interest to problematize both the post-Westphalian presumptions that inform debates in philosophy of law and the category ‘religion’ which is profoundly informed by Protestant traditions” (xiv). One can detect an echo of the somewhat controversial considerations of Asad, Cavanaugh, and other scholars<sup>11</sup> on the central role that Protestant theology has had on the formation of the modern notion of religion and on the links between the latter and the development of the post-Westphalian secular state. However, I cannot see how it is possible to problematize these

8 Ran Hirschl, “Early Engagements with the Constitutive Laws of Others: Possible Lessons from Pre-Modern Religious Law,” *Law and Ethics of Human Rights* 10, no. 1 (2016): 71–108, at 108.

9 Hirschl, 108.

10 With reference to the Canon law of the Roman Catholic Church, see Silvio Ferrari, *Lo spirito dei diritti religiosi. Ebraismo, cristianesimo e islam a confronto* (Bologna: Il Mulino, 2002), 82–89.

11 See, for example, Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: John Hopkins University Press, 1993); William T. Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern State* (Oxford: Oxford University Press, 2009).

presumptions without taking into account the religious law that interacted with the “post-Westphalian secular state” from its very beginning. Emon and Gibbs are aware that the Jewish and Islamic legal traditions cannot be studied in isolation from “the ever-presence of a legal order shaped by the modern state and characterized by secular models of law and governance” (xiii). For historical reasons, Canon law has been much more deeply implicated in the relationship with this secular legal order than Jewish and Islamic law, up to the point that Canon law has internalized some features of the secular legal systems.<sup>12</sup> From this point of view, excluding Canon law is a missed opportunity: its study would have posed questions and opened perspectives on the interaction with a secular legal order that neither Jewish nor Islamic law can bring to light.

Once more, this is not a criticism of the excellent comparative methodology adopted by this book or of the choice to apply it to Jewish and Islamic law only. It is only a reminder that the comparison between these two religious legal systems is part of the broader horizon of the comparison of religious laws, whose rules need to be carefully considered before decreeing what the conditions of a fruitful comparison are.

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<sup>12</sup> See Ferrari, *Lo spirito dei diritti religiosi*, 75–92.