

Forms and Functions of Legal Discourse Intertextuality in Works of Jewish and Islamic Law and Literature – Quotations, Allusions, References, and Plagiarism

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Buch der Abstracts

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Introduction to the Workshop

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2

On the limits of intertextuality in Jewish and Islamic legal traditions

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Conventional approaches to studying the relationship between Jewish and Islamic legal traditions often places them in a linear relationship and seeks to identify the textual 'borrowing' and 'influences' from the older tradition to the younger one. However, texts were only one component of knowledge production and dissemination since oral composition and transmission were normative in the late antique period (and beyond). In addition, the survival of texts is idiosyncratic, such that claims of unique cultural ownership are unviable; multiple, regional traditions shared what frequently is misidentified as 'originating' in one particular tradition. The potential risk of searching for text-based intertextuality is that it becomes the methodological equivalent to holding a hammer and only seeing nails. Texts are reflective of contexts, but contexts are more pluralistic and shifting than texts. I will use a case study on the concept of 'previous divine laws' in the pre-modern Islamic tradition in order to demonstrate these methodological points. Instead of intertextuality, I propose the craft of legal recycling as a more productive model for examining the relations between legal traditions.

3

Qur'ānic Uses of Biblical and Rabbinic Law

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This paper will survey and categorize the Qur'ān's allusions to Biblical and Rabbinic law. My primary aim is to illuminate understudied aspects of both Qur'ānic law and Qur'ānic theology. A secondary aim is to consider the importance of these allusions with regard to sura form and composition. Although older scholarship on the Qur'ān plumbed Rabbinic and Biblical literature intensively for sources of borrowing and influence, including in the area of law, that older scholarship was complexly intertwined with the emerging *Wissenschaft des Judentums*. Consequently, it paid less attention to the Qur'ān's literary form and its characteristic modes of expression. More recent scholarship has shown an intense interest in the Qur'ān's literary form, especially the literary form of individual suras. And yet, the recent structural(ist) approaches to literary form evince remarkably little interest in law. The Qur'ān's allusions to Biblical and Rabbinic law contain important clues to Qur'ānic theology, and the Qur'ān's deployments of references to Biblical and Rabbinic law often mark key structural moments in the suras in which those references occur.

4

Muḥammad's 'Farewell Sermon' and its Intertextual and Rhetorical Links to the Qur'ān and Late Antique Legal Paraenesis

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During the pilgrimage to Mecca in the year 10/632, Muḥammad is said to have delivered an oration to a large audience of believers. Since the event occurred shortly before his death, the oration is commonly known as the Farewell Sermon. Different variants of the Farewell Sermon have been preserved in a number of historical texts, ḥadīṭ compendia, and literary works. The sermon includes mostly ethical and legal material: it abolishes blood revenge and the law of retaliation, usury, and pre-Islamic intercalation practices, and it regulates marital duties and rights. This paper discusses the Farewell Sermon's intertextual and rhetorical links to the Qur'ān and late antique legal paraenesis. The sermon quotes the Qur'ān and shares a number of formal and thematic features with late antique paraenetic texts, such as the Judeo-Christian apocryphal Testaments of the Twelve Patriarchs and Jesus' Sermon on the Mount in the New Testament (Matthew 5-7). The intertextual and rhetorical links that connect the Farewell Sermon to earlier forms of ethical and legal orations in biblical and post-biblical traditions suggest that this form of oral legal instruction was pervasive, and that it played an important role in early Islamic times, before the emergence of the Islamic legal disciplines. Islamic jurists and preachers later entered into competition in the field of legal knowledge formation; the original link between paraenesis and legal instruction was therefore deemphasized. In this paper, I explore the literary past of the Farewell Sermon as it emerges from the sermon itself, and I analyse the specificities of the ideas and rulings incorporated into the text in light of their late antique background.

5

Ibn al-Ṭayyib's *Fiqh al-Naṣrāniyya*: Translating and Recalling Legal Texts of the East Syriac Tradition in an Arabo-Muslim Context

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Abū al-Faraġ 'Abd Allāh Ibn al-Ṭayyib (10th-11th c.) is one of the most important Christian authors of his time. He was an East Syrian Christian, i.e. belonged to the Church of the East also known as the Nestorian church, and was a physician, philosopher and also theologian. He wrote many works on medicine, commentaries on most of the works of Aristotle, Galen and Hippocrates, exegetical works on most of the books of Holy Scripture and dogmatic treatises. Additionally, he was one among the first East Syrian authors who produced collections of ecclesiastical and civil canons and laws in Arabic. His collection, entitled *Fiqh al-Naṣrāniyya*, that is, 'Law of Christianity', is not a simple translation of ancient and traditional East Syriac sources of ecclesiastical law, like the Synodicon Orientale and other official ecclesiastical documents, but it should be considered a legal source for the East Syrians under the Islamic Caliphate, even if some parts of it are a reworking of other previous collections, like the Nomokanon of Gabriel of Basra. My paper, consequentially, aims to give a general view on the canon law of the East Syriac Church, its sources and development, and then to present Ibn al-Ṭayyib's collection, its contents, and the sources the author used. Moreover, by analyzing two specific themes, namely the re-baptism of heretics and unbelievers as well as divorce, this paper aims to understand how this collection recalled the ancient East Syriac tradition and 'adapted' it in the new socio-political context the Christians were living in at the time of its composition.

6

The Halakhot Gedolot and their rabbinic sources

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The Halakhot Gedolot, the 'Large (collection of) Halakhot', is an early codification of Talmudic halakhah, generally attributed to Simeon Qayyara and dated to the second half of the ninth century. It exists in two textual versions, the 'Babylonian' version first published in Venice 1548, and the 'Sefardic' or 'North African' version, published by Azriel Hildesheimer in 1892 on the basis of a Vatican manuscript. The work is closely related to the Halakhot Pesuqot, the 'Decided Halakhot', attributed to Yehudai Gaon (8th century), but also to the She'iltot of Rav Aḥai Gaon with its homiletic sections –how exactly is still a matter of dispute. This lecture does not enter into this question, but is limited to the rabbinic sources of the Halakhot Gedolot, taking as textual example the first part of the Hilkhot Pesah, the rules concerning the 14th of Nisan. A special feature of the Halakhot Gedolot is its frequent use of Palestinian sources, which causes Robert Brody to consider the possibility of a Palestinian origin of the work. The discussion of the rabbinic sources shall demonstrate the Halakhot Gedolot as an excellent example of rabbinic intertextuality, using earlier rabbinic texts, normally without indication of the sources, to construct a compendium of halakhah.

7

“Thou hast learnt that he that tells a thing in the name of him that said it brings deliverance unto the world” (Kinyan Torah 6:6)? On Quotation Norms and Plagiarism in the Judaeo-Arabic Culture of the Central and Late Middle Ages

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While working on Geonic scripts from around the 10th Century of the Babylonian diaspora, written in Judaeo-Arabic, I have noted a widespread and interesting Medievalist phenomenon whereby authors quote almost exclusively from previous authoritative-canonized sources, mainly from the Babylonian Talmud itself. They do not, on the other hand, quote from their predecessors or contemporaries (non-Jews or even Rabbinates). It also becomes apparent how Talmudic sources are not quoted precisely, but rather mentioned only generally, without specifying the tractate. After examining this phenomenon widely in Jewish and Judaeo-Arabic sources, I realized it is not unique to this literature. Generally, in the Middle Ages, it seems academics worked with different literary conventions than we uphold today. Instead of perceiving the 'silence' of the unquoted sources in their works as plagiarism, I suggest we should view the whole normative system of literacy in a different light.

Across periods and cultures, scholarship varies in how it utilizes the richness of available knowledge. The Mediaeval, and especially Judaeo-Arabic oriental, convention followed a simple formula whereby, in Maimonides' words, "You should listen to the truth, whoever may have said it." In this famous quote from his introduction to Mishna Avot, known as Shemona Peraqim, Maimonides was referencing non-Jewish literature, in this case, Aristotelian philosophy, which was not recognized as authoritative by his Jewish readers. Maimonides' words were an attempt to protect himself from being critiqued for referencing unorthodox foreign literature before the general public, as Aristotle's mindset and alien religious/theological principles were not necessarily acceptable for Maimonides' target audience.

The rarity of quoting contemporaries and the style of quoting them in the Geonic period and thereafter raise further questions about the practice of allusion, or proof-texting, to support the argument in the text. This stands in conflict with an explicit Baraita Kinyan Torah ordering, which serves to fairly represent a quotation by bearing in mind the original text and attributing the quote to the original author. This duality of approaches represents not only tension or even contradiction between Judaeo-Arabic Mediaeval practice and an authoritative-canonical text, but rather it turns theologically paradoxical. The instruction in the Baraita Kinyan Torah 6:6, following or corresponding with the previous source Midrash Sifri Numbers §157, recommends making explicit references and rejects the opposite practice of refraining from doing so. The justification for this stance is theologically grounded in a later source, the above mentioned Baraita in Kinyan Torah: "the one who quotes brings revelation/deliverance unto the worldliness."

In my lecture, I hope to elaborate more on the tension between theology and praxis, idealism vs. reality, law vs. Minhag/Idjmaa as a source of valid law, and finally, the written and apparently binding law vs. the Oral Torah. The lecture will further refer to the phenomenon of Genizah, stemming from an overproduction of the textual traditions of the Talmud Torah, with associated difficulty in referring to everything that has been said or written. Through my presentation, I hope to introduce you to the ambiguity of quotes within Judaeo-Arabic Mediaeval writings, and how that can be problematized as plagiarism.

8

Children marriages vis a vis the marriage of lascivious old man: Jewish marriage between Christian and Moslem Realms

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Marriages of minor girls were common in the medieval Jewish society from the 10th century until the 14th and beyond. Despite this, it was only in Muslim countries that fundamental objection to this phenomenon was present. The accepted assumption in research is that the status of the Jewish woman in medieval Germany was superior to that of her counterparts in other communities. At face value, it appears that the Ashkenazi rabbis should have fought for the welfare and wellbeing of minor girls. What gave rise to the difference between the communities? It appears that the answer to this question lies with the financial arrangements that founded the marriage, and from legal differences between canonical and Muslim law.

9

Medieval rabbinic literature seen in a new light –The Yalkut Shimoni on Minor Prophets

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The Yalkut Shimoni compiles important annotations from rabbinic literature to each book of the Hebrew Bible. The voluminous commentary cites more than 50 traditional rabbinic texts including sources which have been lost. Most academic research on the Yalkut Shimoni has focused on reconstructing these lost sources such as Midrash Jalamdenu, other research issues about Yalkut Shimoni have been neglected.

In my paper I will focus on the Yalkut Shimoni on the Minor Prophets. The author of the Yalkut Shimoni was not able to rely on consecutively commentaries on the Minor Prophets such as for example the commentaries on the book of Numbers. In my paper I will therefore focus on the question of compilation techniques. Consequently, the author had to use pieces of commentaries on the Torah or other biblical books where minor prophets are cited and then he compiles them to a new commentary. Furthermore, he puts these fragments together without naming the sources or introducing them to the text.

Part of the discussion is if and how sources were changed to fit the exegesis. I will put the question up for discussion how the composed text functions in general and as how it functions as independent commentary.

In my paper, I will show how the author combines the Palestinian and the Babylonian tradition. The author uses different techniques to cut and inweave different commentaries. Furthermore, I will focus on the ongoing discussion whether the Yalkut Shimoni can be seen as a compilation at all. If this important work can be proofed to be no compilation, it has severe consequences especially for the reconstruction of lost sources quoted inside the Yalkut Shimoni.

10

Comparing references to Islamic legal hermeneutics (uṣūl al-fiqh) in the introduction to the Discipline of Clarity (‘ilm al-bayān) in commentaries on al-Qazwīnī’s (d. 739/1338) *Talḥīṣ al-Miftāḥ* by al-Subkī (d. 773/1372) and al-Taftazānī (d. 793/1390)

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The foundations of the Discipline of Clarity (‘ilm al-bayān) as it was established in the 13th century are based on linguistic philosophical ideas of the tripartite division of the ways of designation into congruence (muṭābaqa), inclusion (taḍammun), and implication (iltizām), as developed from logic in the Islamic legal hermeneutics of Faḥr al-Dīn al-Rāzī (d. 606/1209) and elevated by him to a guiding principle. In post-Rāzian legal hermeneutics, among other things, a detail of this theory of reference, namely the distinction between ‘linguistically set designation’ (dalāla waḍ‘iyya) versus ‘designation to be inferred by reason’ (dalāla ‘aqliyya), continued to be debated, and by the end of the fourteenth century a different opinion was commonly accepted than that formulated by Faḥr al-Dīn al-Rāzī.

This paper will examine how different commentators of al-Qazwīnī’s (d. 739/1338) presentation of the Discipline of Clarity (‘ilm al-bayān) –that quickly became accepted as canonical presentation of this new discipline –incorporate these continued legal hermeneutical discussions within the framework of the genre of ‘commentary,’ which as such is particularly strongly intertextually bound to the source text. How do the authors deal with this situation? How do they use different kinds of intertextuality and to what end?

11

Testimony, Lying and Calumny at the Interface of Islamic Law and Arabic Poetry

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The significance of the concept of ‘testimony’ permeates Islamic jurisprudence and it is invoked in Arabic literary texts as well. Islamic law emphasises the role of trustworthy legal witnesses in establishing the facts of any legal case and has developed a sophisticated system of ascertaining the integrity of witnesses and weighing the evidence offered by witnesses deemed acceptable. Indeed, within the context of examining the trustworthiness of legal witnesses, Muslim jurists sometimes explicitly discuss poets and poetry, not surprisingly in view of the fact that the Qur’ān characterises poets as mendacious, and many ḥadīths also stress the negative values attached to poetry. Truth versus lying (kaḍīb) were also a preoccupation of Arabic literary critics and authors in assessing literary works, and popular attitudes in the pre-modern (and to some extent also the modern) Arab world have also tended to view literary fiction as a kind of mendacity. On the other hand, authentic verse lines would be not-quite-figuratively conceptualised as acceptable evidence (ṣawāhid) for linguistic accuracy, and the notion of ‘testimony’ could be used figuratively as a poetic conceit. More to the point, literary texts might serve as evidence for prosecuting certain types of offenders (e.g. supposed apostates or blasphemers), and certain genres in particular (especially ḥiğā’ and ḡazal) have often been interpreted by jurists as cases of calumny that substantiate legal charges of false testimony (qadf). Offering a copious source of intertextual references at the interface of law and literature, legal discussions of the problem of potential qadf in poetry are the focus of this paper and can help clarify the various ways in which literary texts would be approached and handled by Muslim jurists.

12

The Sunni Sources of Tamhīd al-Qawā'id, a Work on Grammatical and Legal Maxims by Twelver Shiite Scholar Zayn al-Dīn al-Āmilī (d. 965/1558)

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References to sources in pre-modern Islamic writings of all genres can be the cause of great frustration. In many cases, references are simply absent; in others, book titles are regularly ignored in favor of references to authors; furthermore, some references to authors are maddeningly oblique: 'the Judge,' 'one of the Mu'tazila,' 'a certain Šāfi'ī [jurist],' 'one of the sons of our age,' or even simply ba'du-hum 'one of them.' (On practices of citation in general, see Franz Rosenthal, *The Technique and Approach of Muslim Scholarship*, Rome, Pontificum Institutum Biblicum, 1947, pp. 41-44.) In other cases, references are not just insufficient, they are actively suppressed, mainly in order to engage in a form of plagiarism. This is a topic that has received sporadic attention in Arabic and Islamic studies but has not received systematic treatment. For example, Sarah Stroumsa has discussed unacknowledged quotations in philosophical literature. ("Citation Tradition: On Explicit and Hidden Citations in Judaeo-Arabic Philosophical Literature" in J. Blau and D. Doron (eds.), *Heritage and Innovation in Medieval Judaeo-Arabic Culture: Proceedings of the Sixth Conference of the Society for Judaeo-Arabic Studies*, Ramat-Gan: Bar Ilan University, 2000, 167-78). A well-known case is that of the two works titled al-Aḥkām al-sulṭāniyya by al-Māwardī and by Abū Ya'lā al-Farrā', the latter of which is a reworked version of the former. Mariam Sheibani has discussed in detail al-Furūq, by Maliki jurist Šihāb al-Dīn al-Qarāfi, which is mainly a reworked version of his Šāfi'ī teacher Ibn 'Abd al-Salām's work al-Qawā'id. ("Innovation, Influence, and Borrowing in Mamluk-Era Legal Maxim Collections: The Case of Ibn 'Abd al-Salām and al-Qarāfi," *Journal of the American Oriental Society*, 140.4 (2020): 927-954). Zayn al-Dīn al-Āmilī, a Twelver Shiite scholar from what is now southern Lebanon, published several works that drew extensively on Sunni works, to such an extent that they were over 90% verbatim replicas of their sources. His main goal was to produce similar works presentable to a Shiite audience. His manual on pedagogy, *Munyat al-murīd*, was based on a similar work by a Šāfi'ī contemporary Badr al-Dīn al-Ġazzī, al-Durr al-naḍīd. His work on backbiting and gossip was a reworked version of several chapters from al-Ġazālī's *Iḥkām 'ulūm al-dīn*. His work on ḥadīṭ criticism was probably based on a Sunni commentary on al-Ġurġānī's *Muḥtaṣar* on the same topic. (Devin J. Stewart, "Notes on Zayn al-Dīn al-Āmilī's *Munyat al-Murīd* fi *Adab al-Mufīd wa'l-Mustafīd*," *Journal of Islamic Studies* (Oxford), 21.2 (2010): 235-70; idem "Zayn al-Dīn al-Āmilī's *Kashf al-Ribāḥ* al-Aḥkām al-Ghibah and Abū Ḥāmid al-Ghazālī's *Iḥyā' 'Ulūm al-Dīn*," *Shii Studies Review* 1 (2017): 130-50; Bekir Kuzudişli, "Şehid-i Sâni'nin Bidâye'sinin Sünnî Hadis Üsûlü Kaynağı Neydi?: Tîbî'nin Hulâsa'sı Mı, Cürçânî'nin Muhtasar'ı Mı?" *Dinbilimleri Akademik Araştırma Dergisi* 20/2 (Eylül 2020): 509-550.)

This paper is an investigation of the suggestion by the twentieth-century biographer of the Shiite tradition, Muḥsin al-Amīn, that Zayn al-Dīn based his work *Tamhīd al-Qawā'id*, a work on legal and grammatical maxims, on two works by the Egyptian Šāfi'ī scholar, 'Abd al-Raḥīm al-Isnawī (d. 772/1370), *al-Tamhīd fī taḥrīğ al-furū'* 'alā al-uṣūl and *al-Kawkab al-Durrī*. It sets out to determine to what extent Zayn al-Dīn engaged in verbatim borrowing from these two works, what tactics, if any, he used to disguise the borrowing, such as rearranging chapters and sections of the work, whether he drew on other sources, and how he adjusted the content, which addressed the doctrinally marked topic of Islamic jurisprudence, for a Shiite audience.

13

Dynamics of (Legal) Semiotic Hierarchies Beneath Intertextuality: What Can a Ghost from Late 19th Century Egyptian Literature Unveil About Law?

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What are the conditions for meaning-making in intertextuality? The paper explores what the relational dynamics of (legal) transtextuality can reveal about the semiotic hierarchies that govern them.

The interest in these relational dynamics goes beyond the specific relations between texts captured by the hypo-/hyper-text relation. Rather, it embraces the inner conditions of meaning-making in transtextuality across multiple texts. Shifts in the underlying semiotic hierarchies can be tracked within each (legal) field, but the paper turns to literature to explore the potential of intertextuality in exposing the transformative dynamics of various legal fields underneath the shifting semiotic hierarchies. Legal studies have variously investigated these shifting semiotic hierarchies, often resorting to the spectrum imposition/prestige (Sacco 1991); the paper thus looks into the intertextuality of a literary text and what it can contribute to the analysis, beyond the spectrum.

Egypt in the 19th century witnessed major legal transformations (Peters 2020, Fahmy 2018, Hilal 2007). Just as major, however, were the transformations in legal discourse to accommodate a new vocabulary of 'modern' law, often drawing from Islamic law (Parolin 2018). The dynamic relations between alternative legal discourses and their semiotic hierarchies almost imperceptibly transformed over the course of the century, but by the end of the century these hierarchies were nearly entirely redrawn, and Islamic legal discourse had to be characterised or adjectivised as 'Islamic' (Parolin 2015). The paper thus considers one of the canonical works of late 19th century Egyptian literature, Muḥammad al-Muwayliḥ's *What 'Īsā bin Hišām Told Us* (1898-1901). In it, the author describes with irony the shock and tribulations of the ghost of a mid-19th century personality in his encounter with late 19th century Egypt. Al-Muwayliḥ's is however a brilliant fictional device to stage al-Muwayliḥ's own shock and the shock of late 19th century Egyptians at the transformations of the country in a few decades. His humorous account precisely begins with changes in law and its enforcement agencies. Not only does legal discourse often capture the enormity of these legal transformations, but also how other elements of legal semiotics witness to far-reaching transformations that cause the ghost much tribulation, on top of the shock.

14

Form and Functions of Quotations and Allusion in David Zvi Hoffmann's (1843-1921) responsa

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Intertextuality is essential in all branches of Jewish law, including the responsa literature. Since the era of the Rishonim (legal experts between the 11th and 16th century) local Jewish legal experts who had to justify their answers and to convince addressees to accept the answers had been writing responsa. In order to achieve their goal, respondents had been citing former rulings in Jewish law constantly. But did the form and the sources of quotations change in the time of radical changes due to emancipation, secularisation, and Reform-movement-innovations and if so, how? In order to get closer to answering this question, I intend to present the form, functions and sources of quotations and allusions found in David Zvi Hoffman's responsa, during his time one of the greatest halachic authorities in German Orthodox Jewry. I want to show how Hoffmann stages himself as a general, well-educated scholar by quoting academic papers, encyclopaedias or dictionaries as well. Admittedly, Hoffmann predominantly cites Jewish legal texts, but his recourse on sources outside the realm of Jewish law is striking. Besides, I intend to present which role quotations and allusions play in David Zvi Hoffmann's line of argumentation and how they contribute to persuade the reader of the answer. Additionally, I want to elaborate if Hoffmann integrates quotations in the line of argumentation differently when he cites earlier or later scholars/legal texts. Last but not least, I intend to present how Hoffmann stages his own authority by mentioning merely some legal writings without dwelling on the content.

15

Modernity and Jewish Legal Discourse: On the Rhetorical Strategies in Jewish Legal Texts in Egypt

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Just as the modern era put challenges before Muslim reformers in the late 19th and early 20th centuries Egypt who sought a middle path between tradition and modern conditions, Jewish religious authorities understood that modernity brought in fundamental changes that require creative Jewish responses. The British conquest of Egypt, the influx of Jewish immigrants to the land of the Nile, and the increased pace of secularization that penetrated local Jewish communities placed a pressure on religious leaders to accommodate the Jewish faith to the rapid technological, cultural, and social developments their society was experiencing. Aware of the challenges of their community, Jewish religious authorities, as communal leaders, acted enthusiastically, although gradually, to underline the ways in which these rapid changes affected their community and provided responses to their people's inquiries and interpretations to religious texts in order to accommodate tradition to modern currents and preserve the coherence of the Jewish community.

In this paper, I would like to investigate the ways in which intertextuality lent itself in texts legal authorities produced in late 19th and early 20th centuries and were published in Hebrew and Arabic. It will examine closely how ideas, traditions, and previous rulings were mobilized, adjusted, and incorporated into their juridical and literary texts in their treatment of the relationship between tradition and modernity. It will explore the legal and literary techniques religious leaders used towards maintaining and preserving their authoritative status in the community as attentive to the spiritual, moral, and current needs of their people without breaking with the past or violating the principles that constitute the collective identity of the Jewish people in Egypt. For example, in their treatment of modern issues like the Western dress, the gender-mixed social gatherings, seeking treatment with the help of modern medications, how these authoritative voices sought precedents in previous legal and literary texts found in earlier legal authorities like in the Talmud or in the works of medieval and early modern religious reformers Maimonides and Yosef Karo respectively, to name but a few. This paper will also look into the incorporation of legal and literary texts from Arabo-Islamic culture in the Jewish legal discourse to both articulate the connection between Judaism and Islam and to bring the tenets of the Jewish faith closer to the attention of non-Jewish Egyptian legal authorities and to establish communication with members of the Jewish community who were very well-versed and well-established in Arabic and Islam.

16

Resisting Secularization: How Islamic Courts Maintained Jewish Law in 19th –20th Century Egypt

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The jurisdictional authority of courts in Egypt was a key administrative tool deployed by the Egyptian political and legal elite to shape emerging institutions since the mid-19th century. I maintain that the structural reconfiguration of the legal and judicial institutions in Egypt has not only given a wide jurisdictional mandate for the new secular National Courts since their inception in 1883, but it has also expanded their authority to review most disputes that were considered "religious" or fall within the purview of Islamic Courts. This paper explores the jurisprudence of the Islamic Supreme Court (1897-1955) (thereafter, ISC) in relation to Jewish litigants and Jewish law. I pursue two arguments in this paper. First, I propose that Islamic courts procedurally maintained the validity and the application of Jewish law. The ISC consistently upheld the decisions passed by Jewish courts in disputes on family law. Second, I assert that the ISC –resisting the overriding secularization of legal institutions –reaffirmed the jurisdictional authority of Jewish courts to hear cases and pass judgements.

17

Reform and 'classic-systemic intertextuality': The Rhetorical Significance of the Use and Avoidance of References in the Fatwas

of a 20th century Reformer

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It is hardly surprising that fatwas as expert opinions under Islamic law generally show a high degree of intertextuality, since Islamic law itself can be described as a system of interrelated texts and references. Thus, these references are a fundamental aspect of establishing authority. However, modernity brings some essential changes to the field of *iftā'* (fatwa-giving), including reformist voices in 20th century Egypt disapproving of the traditional scholar's fatwa creation through persistent application of existing interpretations and explanations of earlier scholars (*taqlīd*). One famous representative of this movement is Muḥammad Rašīd Riḍā (1865-1935) who himself gave fatwas for years through his magazine *al-Manār*. In theory and based on the reformer's demand for an independent derivation of norms in keeping with the present day based on the principles of Islam and free of later influences (*iḡtihād*) one would expect that quotations and references in Riḍā's fatwas are limited to the Qur'ān and Hadīṭ (reports about the sayings and doings of the prophet Muḥammad), while references to the canons of the law schools hardly exist or are only mentioned in order to be criticized. The question, however, is whether such a lack of references proves the practice of an own *iḡtihād* or whether it is a deliberate omission and thus more of a rhetorical choice. Is it possible for a modern mufti to give fatwas without the typical, what I call 'classic-systemic intertextuality' of Islamic jurisprudence and how does he then produce an authoritative fatwa? Through an exemplary analysis of the text, I will be examining these questions and show how certain references are used while others are avoided or blurred in the reformer's fatwa, how even a certain positioning of a quote within the text can change the significance that is assigned to their originators as authoritative sources and the purpose that such references fulfil and how the reformer establishes his own authority by gradually weaving a web of intertextuality around himself and his Islamic legal and intellectual output.