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Walking Side by Side: Engagement with Islamic Law and Theology in Rabbinic Legal Literature

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How often do you think about the way you walk? If you're a normally functioning adult, probably not very often at all. Only on rare occasions—such as when we experience an injury or disability, or when we watch a toddler or a Monty Python sketch—do we pause to reflect on this basic aspect of our physical existence as human beings. *Halakhah* (Jewish law) and *shari'a* (Muslim law) are also “ways of walking,” in a normative rather than a physiological sense. They too create realities that are so fundamental and pervasive that those who function within each of these legal systems often take their pathways, procedures, and presuppositions for granted. The comparison of Jewish and Islamic law provides opportunities for participants in each system to engage in critical reflection. By looking at similarities and differences, we are able to ask such questions as: Why do we walk in the way that we do? Might we be able to walk in a manner more pleasing to God?

The way we consider those who walk alongside us has a direct impact on the quality of the questions we can pose to our own legal tradition. This essay considers three different models attested within *halakhic* literature for attending to the beliefs and practices of the Muslims among whom most medieval Jews lived. Familiarity with these

¹ This essay is based on a talk I delivered at a 2011 “Judaism and Islam in America” workshop on the interpretation of law and scripture, hosted by Hartford Seminary. I am grateful to my mentor, Burton Visotzky, for the invitation to participate in that workshop. I address the sources discussed in this essay at greater length and with full scholarly apparatus in *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley: University of California Press, 2011), 211–16; “Fusion Cooking in an Islamic Milieu: Jewish and Christian Jurists on Food Associated with Foreigners,” in David M. Freidenreich and Miriam Goldstein, eds., *Beyond Religious Borders: Interaction and Intellectual Exchange in the Medieval Islamic World* (Philadelphia: University of Pennsylvania Press, 2012), 144–60; “The Use of Islamic Sources in Saadia Gaon’s *Tafsir* of the Torah,” *Jewish Quarterly Review* 93 (2003): 353–95.

This essay focuses exclusively on approaches to comparative law employed by practitioners of *halakhah* (Jewish law). On approaches used by academic scholars of comparative religion, including comparative religious law, see David M. Freidenreich, “Comparisons Compared: A Methodological Survey of Comparisons of Religion from ‘A Magic Dwells’ to *A Magic Still Dwells*,” *Method and Theory in the Study of Religion* 16 (2004): 80–101; *Foreigners and Their Food*, 10–13.

models, which can be found within classical *fiqh* literature as well, may prove valuable to present-day authors of both Jewish and Islamic responsa (*teshuvot* and *fatāwa*).

We begin with Rav Naḥshon Gaon (d. 879).² One of his responsa exemplifies an unfortunate, and unfortunately commonplace, approach to addressing foreign systems of religious law: total disregard. This ruling addresses the applicability to Muslims of Talmudic laws that forbid Jews not only from drinking any wine touched by an idolater, but even from deriving benefit from such wine (for example, by selling it). Rav Naḥshon writes,

We hold that Ishmaelites today are in fact idolaters even though they do not realize it, for our Rabbis taught (Babylonian Talmud, *Avodah Zarah* 11b), “There are five permanently established temples of idolatry, and one of them is Nashra in Arabia.” (*Eshkol*, ed. Albeck, 2: 77–78)

Rav Naḥshon perceives the world around him through an exclusively Talmudic framework. He does not refer to his neighbors as “Muslims” but rather as “Ishmaelites,” regardless of the fact that some of these Muslims were presumably not Arabs. He also asserts that these Muslims unwittingly revere a sanctuary in Arabia that is “permanently” idolatrous without regard for the fact that his proof-text predates the rise of Islam! Because Rav Naḥshon insists that Muslims are idolaters regardless of the way Muslims understand themselves, he concludes that Jews may neither drink nor derive benefit from wine that Muslims touch.

Rav Naḥshon regards Islamic law and theology as irrelevant, even when considering Rabbinic laws that relate directly to the beliefs and practices of non-Jews. The legal argument that results from such disregard is flawed not only because it bears no relation to the lived experiences of Muslims but also because it fails to persuade Jews who are themselves familiar with that reality. This model, already problematic in the ninth century, is unsustainable in an era characterized both by diminished religious authority and ready access to information from multiple perspectives. Without careful attention and proactive efforts, however, contemporary Jews and Muslims alike easily fall back on traditional stereotypes about one another.

The rulings of other medieval rabbis exemplify a more constructive approach to engagement with Islamic law: regarding it as a valuable source of data about Muslims. Setting aside the issue of whether or not Muslims are idolaters, several *geonim* ascribe *halakhic* significance to the fact that Islamic law forbids the consumption of alcohol, information that Rav Naḥshon acknowledged but ignored. In the words of Rav Hai Gaon (d. 1038), “It is clear that wine is not at all associated with their worship and they consider it to be sinful. For that reason, we do not hold stringently in this matter and are not concerned about the potential of libation” when a Muslim comes into contact with

² The honorific “Gaon” (pl. *geonim*) refers to the leader of a major Babylonian (Iraqi) rabbinic academy of the 8th–11th centuries.

Jewish wine (*Eshkol*, ed. Albeck, 2: 74). According to Rav Hai, Jews may derive benefit from wine touched by Muslims because Muslims do not use wine in their religious rituals. (Rav Hai does not extend this leniency to wine touched by Christians because of the role that wine plays in the eucharistic liturgy.) Familiarity with Islamic law and practice—in this case, the fact that Muslims do not offer wine libations—functions as justification for the adaptation of pre-Islamic *halakhab* in light of contemporary realia. Regular interaction between Jews and Muslims today can similarly prompt the rethinking of entrenched norms.

Rabbi Moshe ben Maimon (d. 1204; known in Hebrew as Rambam and in Latin as Maimonides) takes regard for the data gleaned from Islamic law and theology to an even deeper level. The way he does so, however, requires some unpacking.

The wine of a resident alien—one who accepts seven laws [including the prohibition of idolatry], as we have explained—is prohibited for consumption but permitted for benefit; one may leave [Jewish] wine alone with him but may not store it in his possession. The same applies to all gentiles who do not engage in idolatry, like these Ishmaelites: their wine is prohibited for consumption but permitted for benefit, and so taught all the *geonim*. Christians, however, are idolaters and their ordinary wine is prohibited for benefit. (*Mishneh Torah, Hil. Ma' akhalot Asurot* 11.7)

Muslims, Rambam recognizes, are monotheists, so laws that apply to idolatrous gentiles do not apply to Muslims. This means, among other things, that Jews may derive benefit from wine touched by Muslims. According to Rambam, however, these laws do apply to Christians on account of Christian doctrines regarding incarnation and the Trinity, which violate Rambam's definition of true monotheism.

Rav Hai Gaon (among other *geonim*) offers a narrowly formulated ruling about the wine of Muslims based on the fact that Islamic law enjoins abstinence from alcohol. Rambam, in contrast, equates Muslims with “resident aliens,” a hypothetical Talmudic class of monotheists whose legal status is distinct from that of other gentiles. Rambam's reference to *geonic* teachings notwithstanding, none of his predecessors offers such an argument. We can better understand what is going on in this innovative *halakbic* text by first considering a third model for engaging Islamic law and theology, exemplified in the commentary to the Ten Commandments by Rav Se'adiah Gaon (d. 942).

The Seventh Commandment, “Do not commit adultery”: In it there are seven senses [in ascending order of severity] because there are seven categories of people with whom illicit relationships are forbidden. The first is the temporary (*mut'a*) marriage, because a woman who does this is called a *qedeshah* as you learn from the story of Tamar (Genesis 38). [The Torah] prohibits this, saying “No Israelite woman shall be a *qedeshah*, and no Israelite man shall be a *qadesb*” (Deuteronomy 23.18); both men and women are prohibited [from engaging in temporary marriages]. (*Commentary on Exodus* 20.13)

Scholars of Islamic legal history will recognize the concept of *mut'a*, a time-limited marriage contract that in effect legitimizes one-night stands. The status of such marriages was subject to vigorous dispute between Sunnis and Shi'is, the former condemning them as illegal. Rav Se'adiah evidently agreed with the Sunnis, even though the Babylonian Talmud reports that rabbis engaged in temporary marriages. To support his position, the Gaon reads the prohibition against temporary marriages into the Torah itself by interpreting the term *qadesb/qedesbab* as "one who engages in a temporary marriage" (*mumta'/mumta'a*). This is hardly a natural reading of the term, which medieval and contemporary Bible scholars alike understand to mean "harlot" or "cult prostitute." Rav Se'adiah justifies this interpretation by reference to the story of Tamar and Judah: their offspring were Judah's legitimate heirs because Tamar and Judah contracted a *mut'a* marriage. The point of such a marriage is precisely to secure the legitimacy of children conceived through the relationship. By redefining the biblical term *qedesbab* in light of contemporary Islamic law, Rav Se'adiah can draw on a biblical proof-text to outlaw a previously accepted practice, thus aligning rabbinic *halakhab* with Sunni *shari'a*.

Rav Se'adiah does more than merely pay attention to Islamic law as a source of data about Muslims. He regards Islamic law as a source of inspiration, using its terminology and logic to craft his own *halakbic* argument about an issue of common concern. The Gaon does not, of course, cite *hadith* to prove his point, as Sunni jurists do; instead, he reaches the same conclusion as his Sunni counterparts by distinctively Jewish means.

Rambam does something similar when addressing the legal status of Muslims: he draws on Islamic ideas regarding the status of Jews and Christians. Rambam uses the Talmudic "resident aliens" as the *halakbic* equivalent of the Islamic category "People of the Book." Both terms refer to people who revere the One God but not the solely authoritative Revelation. Rambam does not simply borrow the Islamic category, however—notice that he excludes Christians, even though they and not Muslims revere the Jewish "Book." Rather, Rambam invests a classic *halakbic* category with new meaning, apparently drawing on Islamic law and theology for his inspiration. I say "apparently" because Rambam does not acknowledge the influence. Quite the contrary, he seeks to portray his unprecedented legal ruling as thoroughly traditional by invoking Talmudic terms (resident alien, Ishmaelites) and the authority of the *geonim*.

Practitioners of *halakhab* and *shari'a* today can benefit greatly from regarding one another's legal systems as a source of inspiration in the face of common concerns. Muslims, for example, might discover valuable approaches to integrating feminism and *fiqh* by considering the ways that American rabbis—not only Reform and Conservative but also Orthodox—have enabled women to assume roles of religious leadership. As they seek to persuade individualistic Americans to embrace a *halakbic* lifestyle, contemporary rabbis would do well to draw explicitly not only on the black-and-white of required and forbidden but also the concepts of praiseworthy and reprehensible (*mustahabb* and *makruh*). These intermediate, value-oriented categories play a prominent role in *fiqh* but not in *halakhab*, although evidence for their validity can be found in rabbinic sources as well—for example, in the concepts of *lifnim mi-shurat ha-din*

(acting in praiseworthy ways beyond what the law requires) and *naval bi-resbut ha-Torab* (acting in a reprehensible albeit legal manner).

More importantly, the process of seeking inspiration from one another's religious traditions enables us to reflect upon the ways in which we walk. Such reflection can help us gain a deeper understanding not only of the other but also of ourselves and, perhaps, of the divine will. To adapt a classic line from the Passover Haggadah: Whoever goes to great lengths to explore God's teachings—wherever they may be found—such behavior is indeed praiseworthy!