When Beruriah Met ‘A’isha: Textual Intersections and Interactions Among Jewish and Muslim Women Engaged with Religious Law

by

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A thesis submitted in conformity with the requirements for the degree of Doctorate of Philosophy

Department for the Study of Religion
University of Toronto

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Abstract

This study explores various understandings of religious authority, law and empowered textual interpretation among two distinct yet inter-related groups of Jewish and Muslim women: contemporary academics and laywomen in North America who are engaged in the study of classical religious texts. There are two modes through which I examine these women’s interpretive activities: the first approach involves a comparative textual analysis of women’s academic writings on religious texts, while the second utilizes feminist ethnography to zero in on the textual experiences of Jewish and Muslim laywomen who spent time studying religious texts together.

Although the entitlements offered to women under secular laws in North America generally surpass those granted to them under Jewish and Islamic law, rather than abandoning religious laws entirely, Jewish and Muslim laywomen and exegetes continue to grapple with religious legal texts and praxis, since these are bound up with notions of identity, community and belonging. But rather than accepting the status quo, this highly-educated subset of Jewish and Muslim women empower themselves to reinterpret traditional texts and adapt communal practices to better reflect more inclusive and egalitarian values. Through their academic works,
scholars such as Amina Wadud, Tikva Frymer-Kensky, Judith Hauptman, Fatima Mernissi, Kecia Ali and Rachel Adler revisit religious law and succeed in broadening the communal spaces, leadership roles and personal status entitlements available to Jewish and Muslim women. Similarly, when Toronto-based laywomen challenge the ideas coming from the pulpits of their local mosques and synagogues, or use their own knowledge of texts and other extra-textual sources to redefine how they eat, dress and pray as Muslims and Jews, they are pushing the boundaries of how each community views women, traditional praxis and authority, forcing us to confront what it means to be a Jewish or Muslim woman scholar in the twenty-first century. These acts of empowered interpretation and religio-legal reform among both laywomen and exegetes arise from a similar source: a ‘textual confidence’, which is a strange alchemy of a solid traditional and secular education, strong familial and communal supports, but is equally related to one’s geography, conceptions of gender and perceptions of authority.
Acknowledgments

They say it takes a village to raise a child. Well, it seems it also takes a village to enable the countless hours of writing, reading and research that go into completing a PhD dissertation. Since I have been attempting to do both simultaneously – raise children and complete a PhD – it seems that I owe much gratitude to a whole lot of villagers. Indeed, I would not be at this stage were it not for the endless and unwavering support of my family, friends, colleagues, students and mentors. To my supervisory committee, Bob Gibbs, Anver Emon, and Pamela Klassen, thank you so much for your leadership, incisive feedback, strategic advice, and for believing in the merits of this project overall. Thank you as well for all the intellectually-nourishing, dynamic, and thought-provoking initiatives you invited me to participate in along the way; I am forever grateful for these invaluable professional, networking and learning opportunities. I am also extremely grateful for all the sources of funding I have received over the years. This includes SSHRC’s Canadian Graduate Scholarship, the University of Toronto Fellowship, CCCJ First Families’ Fiftieth Anniversary Fund, Ontario Graduate Scholarship (declined), the Lieba Sharon Wilensky Lesk Graduate Scholarship and the Terek Heggy Graduate Fellowship in Jewish-Muslim Relations. To colleagues Nevin Reda, Susan Harrison, and Ayesha Chaudhry, thank you for your insightful and sensitive analyses of both texts and contexts. Reading with you over the years has been a privilege and our discussions have very much informed the way I approached this work. To Michal Nahman, Ruth Matthews, and Louise Smith, thank you not only for your decades of friendship, loyalty, sensitivity and understanding, but for providing additional lenses through which to consider my work. To the intrepid women who participated in my text-study groups over the years, your bravery, sincerity, and determination have been awe-inspiring. I hope you feel that I have adequately represented our time together in these pages and would be honoured to have more opportunities to meet and study together in the future. And then of course there is my family, who in addition to aiding and abetting the PhD process were also integral to helping with my child-rearing. Thank you to my stellar network of baby-sitters and chauffeurs: my in-laws Nelly Abramov and Yuri Abramov, and sister-in-law Vered Abramov, plus my parents Celia Golberg and Leonard Golberg, and my sister, Aviva Golberg and brother-in-law, Craig Reid. My parents and sister also did double-duty as much-needed sounding boards. I am humbled and forever grateful for your patience in letting me drone on –
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And yes, Ori, it is finished now.

With much gratitude,

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Note on the Use of Hebrew and Arabic Terms

Throughout this study, lesser known Hebrew and Arabic terms have been translated and italicized the first time they appear in the main text or footnotes, but appear without italics in every subsequent use of the term.

As well, with regard to specific texts, I have capitalized ‘Hadith’ when referring to the whole Sunni corpus of Hadith collections (i.e., the content of ‘the six books’). However, the word appears with a lower-case ‘h’, as ‘hadith’, when I am referring to a particular tradition in one or more of the compilations. I have used the same convention when referring to the Mishnah or Midrash; if the word is capitalized, it refers to a whole book, whereas as if it is uses the lower-case form, it refers to a smaller unit of material within that larger corpus.

Abbreviations of Biblical and Rabbinic texts follow the conventions set out by SBL, the Society of Biblical Literature. Most Arabic terms are transliterated according to the guidelines of The Journal of Middle Eastern Studies, and accordingly appear without diacritics.
Introduction

Contrary to Fatima Mernissi’s contention above, this work takes the view that women intellectuals and scholars can and do shake up religious systems. In that vein, this study explores various understandings of religious authority, law and empowered textual interpretation among two distinct yet inter-related groups of Jewish and Muslim women: contemporary academics and laywomen who are engaged in, and committed to, the study of classical religious texts. Both groups are part of a privileged and highly-educated subset of Jewish and Muslim women residing mostly in North America. While these women do stand out in traditions such as Judaism and Islam with long histories of male-dominated exegesis, they did not emerge out of thin air.

Early Textual Trail-blazers and the Reluctant Support of Male Religious Authorities

The circumstances that paved the way for an upsurge in women’s religious literacy in both Jewish and Muslim communities throughout the world are complex, but the encounter of European Jews with the Enlightenment, and Middle Eastern and South Asian Muslims with European colonialism were certainly contributing factors. Both traditional and more

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1 Strictly speaking, Ilana Pardes, whose work on the Hebrew Bible is featured in Chapter 2, is based out of the Hebrew University of Jerusalem. However, she received her doctoral training at the University of California, Berkeley, regularly teaches abroad at American universities, and writes primarily for English-speaking audiences, so her scholarly impact is felt most strongly in North America. Similarly, two of the Muslim women academics featured in Chapter 3 – Fatima Mernissi and Sa’diyya Shaikh -- reside in Morocco and South Africa, respectively. I have included both these scholars as their work on Hadith is more extensive than most women working in the field of Islamic Studies today. Nonetheless, Shaikh’s experiences of Islam are not entirely dissimilar to those Muslims living in North America, as she too lives as a Muslim minority in an English-speaking country, writes in English, and her work is very much in conversation with that of American scholars such as Amina Wadud. Although Mernissi is the only scholar featured from a Muslim-majority country, she was one of the first contemporary women scholars writing critically about Islamic sources from a gendered perspective and her work remains highly influential. For more on the lack of women working in the area of Hadith Studies, see Chapter 3.

2 While the Enlightenment and European Colonialism may seem like incomparable forces, they are similar in that European ideals began to filter into somewhat self-contained Jewish and Muslim communities in unprecedented ways that would signify a shift in the ways that Jews and Muslims would experience their traditions thereafter. And on the basis of Edward Said’s Orientalism thesis that scholarly writings about the ‘Muslim East’ informed colonialist policies, the Jewish Enlightenment movement and European Colonialism are not entirely separate
acculturated Ashkenazi Jews in Europe had for some time allowed their daughters to receive some form of secular education, but in the post-enlightenment period, the maskilim a group of German-Jewish reformers and intellectuals were the first to suggest that Jewish girls receive an education that was on par with the one granted to boys. Not to be outdone by these more liberal rivals, in 1853, the father of Modern Orthodoxy, Rabbi Samson Raphael Hirsch, responded by developing separate schools in Frankfurt – one for girls and one for boys – which not only combined a secular education with traditional Jewish studies, but taught virtually the same curriculum to both sexes. Still, it was the establishment of the Bais Yaakov school by Sarah Schenirer in Cracow 1918 which is often regarded as a major turning point in the religious education of Jewish girls. Sarah Schenirer solicited and received a responsum from Rabbi Yisroel Meir Kagan, a renowned halakhic authority of his time, stating unequivocally that contemporary conditions allowed for putting aside traditional concerns vis-a-vis Torah study and entities, as several of the most influential early Orientalist scholars were Jewish inheritors of the Maskil movement, including Abraham Geiger, Heinrich Graetz, and Ignaz Goldziher. See Said, Orientalism (New York: Knopf Doubleday Publishing Group, 1979). However, in the case of the Jewish Orientalists, the situation was more complicated and layered than this, as John M. Efron has argued. Being from Germany and Hungary, none of these Jewish scholars could be directly linked to imperialist projects and their scholarly approach to Islam was generally more favourable than that of their Christian Orientalist counterparts. As Efron has noted, “the Jewish Orientalists accepted as a badge of honour the Enlightenment’s pejorative description of Judaism as “oriental”...they turned respectfully to the study of Islam and/or the Jewish culture that flourished under its aegis, hoping that the grandeur and beauty of both could reinvigorate Judaism and weaken the ‘dominance and authority’ they themselves experienced at the hands of Europeans.” See Ephron, “Orientalism and the Jewish Historical Gaze” in Orientalism and the Jews, eds. Ivan Davidson Kalmar and David Pensegar (Lebanon, NH: Brandeis University Press, 2005), 93. So in the ways that communities of Jews and Muslims experienced them, the Enlightenment and European imperialism were somewhat connected as similarly oppressive forms of European dominance against which Jews and Muslims reacted as they entered the modern era.

3 The pedagogical philosophy of the Maskilim tended to de-emphasize the importance of traditional religious teachings and Jewish subjects, preferring more universal ideals and moral teachings, but reform through religious education was still a key value. See Mordechai Eliav “Pioneers of Modern Jewish and Religious Education of Girls: The First Schools in Germany in the 19th Century” in Abiding Challenges: Research Perspectives on Jewish Education: Studies in Memory of Mordekhai Bar-Lev, ed. Yisrael Rick and Michael Rosenak (London: Freund Publishing House, 1999), 152-154.

4 Hirsch is actually claimed by both Modern Orthodoxy and Ultra-Orthodox or Haredi sects. The two movements, which are hardly monolithic, would disagree on how much involvement with ‘worldly affairs’ is espoused by Hirsch’s philosophy.

women.⁶ Bais Yaakov would evolve into a vast network of girls’ schools, first in Europe and eventually in North America and Israel. After World War II, with the centres of Jewish life shifting from Europe to the United States and Canada, scores of Jewish day schools open to both boys and girls,⁷ each with its own educational, political and theological philosophy and representing all the modern denominations of Judaism, would pop up in major North American cities.⁸

In the case of Muslim girls, sources dating back to the ninth century indicate that girls in some communities were able to receive a rudimentary form of Qur'anic education in the *kuttab*, a makeshift, mosque-based elementary school.⁹ As well, a significant number of women were integral to the memorization and transmission of Hadith, most notably in the first few centuries of Islam, and again in fourteenth and fifteenth century Cairo and Damascus.¹⁰ However, it was

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⁷ It should be noted that the preference in Orthodox-affiliated schools is that girls and boys be educated separately. The fact that one of the first Orthodox day schools in North America, Soleveitchik’s Maimonides’ School in Boston, was not a sex-segregated school is an anathema, and seemingly at odds with Soleveitchik’s more standard approach to issues of gender. See Farber, *American Orthodox Dreamer*, 75-77.

⁸ While the early 20th century saw many North American Jewish families, of all denominational backgrounds, sending their children to public schools while enrolling them in supplementary, after-school programs to learn about their cultural heritage, the post-war period seems to have initiated a preference for full day-school programs, in which children were taught the required public school curriculum, as well as Hebrew, Bible Study, and other Jewish subjects, depending on the philosophy of the school. As Alex Pomson has observed, in 1944, there were 39 Hebrew day-schools in the U.S., but by 1982, this number would jump to 550. See Alex Pomson, “Jewish Day-School Growth in Toronto: Freeing Policy and Research from the Constraints of Conventional Sociological Wisdom” in *Canadian Journal of Education* 27, 4 (2002): 379-398. According to Sylvia Barack Fishman, those affiliating as Orthodox are more likely to provide their daughters with a rigorous Jewish education than those involved in other more egalitarian Jewish communities. See Sylvia Barack Fishman, *A Breath of Life: Feminism in the American Jewish Community* (Hanover: University Press of New England, 1993), 192.


¹⁰ See Mohammad Akram Nadwi, *Muhaddithat: The Women Scholars in Islam* (Oxford: Interface Publications, 2007), xv. While the genre of biographical dictionaries are a testament to the fact that women were continuously involved in the preservation and dissemination of hadith in major Islamic centres, the precise role that women played in this important source of religious knowledge is a subject of ongoing debate. Jonathan Berkey and Ruth Roded have speculated that the so-called learning of these female hadith transmitters required little more than a good memory. While women were indeed able to teach, they usually did so in informal networks, and they were not, as
not until the development of thriving women’s movements in Egypt, Turkey and Iran in the late nineteenth and early twentieth century that significant changes would be seen in girls’ access to higher forms of education.\footnote{An early example was The School for Girls, established in 1907 in Tehran by pioneer of the Iranian women’s rights movement, Bibi Khanoom Astarabadi. The school allowed girls to receive instruction in history, languages, grammar and religion. See Afsaneh Najmabadi, \textit{Women with Mustaches and Men without Beards: Gender and Sexual Anxieties of Iranian Modernity} (University of California Press, Berkeley, 2005), 200-201.} There are now over two hundred Muslim school programs in North America,\footnote{See Yvonne Y. Haddad and Jane I Smith, “Introduction: The Challenge of Islamic Education in North America” in \textit{Educating the Muslims of America}, eds. Yvonne Y. Haddad, Farid Senzai and Jane I. Smith (New York: Oxford University Press, 2009), 11.} and although the traditional Islamic preference has been for girls and boys to be educated separately,\footnote{Although the authors of most medieval tracts on Islamic educational theory scholars focused their discussion exclusively on the moral training of boys, in one work in particular entitled \textit{Rules of Conduct for Teachers}, the 9\textsuperscript{th} century author Ibn Sahnun indicates a preference that young girls not be instructed together with young boys. Yet, as Sebastian Gunther has demonstrated, Ibn Sahnun’s comment also implies that co-education was indeed taking place, for otherwise, why the need to advice against it? See Sebastian Gunther, “Be Masters in that You Teach and Continue to Learn: Medieval Muslim Thinkers on Educational Theory” \textit{Comparative Education Review} 50, 3 (2006): 371.} in most cases, schools have adapted to the American paradigm where the preferred model is co-education and parallel curricula for children of both sexes.\footnote{See Hilda Yacoub Abu Roumi Sabbah, “Gender Issues in Islamic Schools: A Case Study in the United States” (Salt Lake City, Utah: Brigham Young University, 2007), 4. See note 7 above regarding a similar preference at Orthodox-affiliated Jewish day schools. http://education.byu.edu/pbsi/documents/HildaspresentationforTECByouchnov15.pdf (accessed 18 Dec 2012).}
Still, it is noteworthy that, in both Jewish and Muslim communities, the leading male authorities of the day seemed to get behind these modern educational reforms in the hopes that better schooling will inoculate girls against secularizing forces, help them become more pious wives and mothers, and teach them skills to more effectively run their households. But the joke was on these defenders of ‘tradition’: women’s thirst for religious knowledge and traditional forms of study would lead them well beyond the confines of their households.

Today, as the women chronicled in this study can attest, both Jewish and Muslim women are studying religious texts as never before. This includes laywomen studying in religious day schools and training in religious seminaries, such as women’s yeshivas and madrasas, but also numerous Jewish and Muslim academics who have made scriptural exegesis their primary field of study. While it could be said that these women – both the academics and the lay practitioners – owe their textual freedoms and interpretive abilities to these earlier textual trail-blazers and beneficiaries of educational reform, there is yet another set of women who are also frequently referred to when considering the legacy of Jewish and Muslim women engaging their traditions: Beruriah and ʿAʾisha, a pair of near-mythic figures whom we know from rabbinic literature, Prophetic traditions and Prophetic biographies respectively. As we shall see, these two women can be variously understood as shaking up the patriarchal religious systems in which they were embedded or, as Mernissi’s comment suggests, as defending and buttressing the very structures that worked to disadvantage them. But perhaps as textual products, they can offer more to us as well. A closer look at the narratives associated with each of them will help us to understand why they are recurring figures in contemporary Jewish and Islamic discourses about women and religious authority.

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16 Some of the most popular institutions for Jewish women include Drisha in New York and Matan in Jerusalem. For Muslim women, the availability of higher levels of religious instruction varies from country to country. For example, Egyptian women can take courses in Islamic Sciences (Qurʾan, Islamic philosophy, and Islamic jurisprudence) at Al-Azhar University, considered to be one of the most renowned institutions in the Islamic world, while in Iran, there are 100’s of women’s religious seminaries, the largest and most prestigious being Jamiat al-Zahra, established in 1986. An international program to foster Muslim women’s Islamic legal expertise is currently being developed by the ASMA Society, which is based in New York.
Beruriah

Beruriah is a female scholar referenced in the Talmud. In the earliest extant text bearing her name, we are told, “Beruriah has spoken well” when she correctly gives a ruling on the ritual cleanliness of an oven door. Elsewhere, Beruriah is cited as having been able to learn “300 traditions in a day from 300 masters”, and on several different occasions, she is portrayed as correcting other men for their misunderstanding of a biblical verse. Upon encountering a student who was reciting his lessons in a whisper, we are told that Beruriah “derided [or kicked] him and said to him, "Is it not written, 'Ordered in all and secure?' [That is,] if it is ordered by means of [all] your 248 limbs, it will be preserved. But if not, it will not be preserved.” Citing a passage from the Book of Samuel as her prooftext, Beruriah explains to the befuddled student that, if he wants to truly assimilate what he has learned, quiet recitation of a lesson is unacceptable; rather, the whole body, each of its “248 limbs” needs to be engaged.

Similarly, the text is remarkably uncritical of her even in a source where she second-guesses her husband, the esteemed Rabbi Meir, for his decision to pray for the death of some local bandits. She asks him,

What is your opinion [i.e., on what do you base your prayer?] Because it is written 'Let sins cease...?' Is 'sinners' written? [Rather] 'sins' is written. Furthermore, cast your eyes to the end of the verse, 'And they are wicked no more.' Since sins will cease, they will be wicked no more. So pray that they repent and be wicked no more.

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17 Beruriah is also often identified in rabbinic literature as the daughter of Rabbi Hananya ben Teradyon and the wife of Rabbi Meir. In an influential article written in 1975, David Goodblatt argued that Beruriah three appellations likely referred to two or possibly three distinct women at one time, but that these traditions were harmonized and eventually amalgamated into one figure linked to two well-known rabbis by the redactors of the Babylonian Talmud. The tendency to manufacture kinship ties between prominent Talmudic figures has been noted by S. Safrai, among others, as a means of cementing the status of certain sages. See David Goodblatt, “The Beruriah Traditions” in Journal of Jewish Studies 26 (1975): 68-85 and S. Safrai “Tales of the Sages in the Palestinian Tradition and Babylonian Talmud” in Studies in Aggadah and Folk-Literature, ed. J. Heinemann and D. Noy. (Jerusalem: Magnes Press, 1971), vol. 22: 229-232. For another perspective which treats all these sources as being part of one literary trope, see Rachel Adler, “The Virgin in the Brothel and other Anomalies: Character and Context in the Legend of Beruriah Traditions,” Tikkun 3:6 (1988): 28-32.


19 b. Pesah. 62b.

20 The rabbis understood the body to have 248 limbs corresponding to the 248 positive commandments in the Torah. See b. Mak. 23b.

21 b. ‘Erub. 53b-54a
The text ends by indicating that Rabbi Meir did exactly what she recommended. Interestingly, Rabbi Meir himself does not have a voice in this text. His actions are described through third-person narration, and it is Beruriah’s voice that dominates in the source. So, despite the rabbis’ generally negative disposition towards women and the study of Torah,²² virtually every source associated with Beruriah attests to, and is complimentary of, her great familiarity with scripture, rabbinic exegesis, and rabbinic legal rulings.

ʿAʾisha

I have already mentioned the important role that the early generations of women played in the transmission of Hadith, but in the Sunni tradition, the Prophet’s wife ʿAʾisha, often regarded as his most beloved spouse, stands out among other women transmitters.²³ Bukhārī includes in his collection over 50 authoritative traditions transmitted by ʿAʾisha.²⁴ Her accounts of accepted practice cover a wide range of topics, from ritual purity to inheritance, to rules of prayer, marriage, and fasting. Like Beruriah, she too is often depicted correcting male leaders in her

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²² Throughout the Talmudic corpus, there seems to be an implicit assumption that women are not obligated to study Torah. While the Book of Deuteronomy explicitly mentions that women are to be present at the cyclical reading of the Law before the assembly, the rabbis of the Talmudic period downplay the role of women, suggesting that while the men came to study and learn Torah, the women only came to listen. See y. Sotah 3: 18d-19a. Furthermore, they understand a commandment to teach the words of the Torah to one’s children as only applying to male children. See b. Qidd. 29b. As Rachel Adler has pointed out, discussions on the subject usually begin with the question, “And how do we know that women are exempt?” As if the answer is known from the outset. See b. Qidd. 34a; also Rachel Adler, Engendering Judaism: An Inclusive Theology and Ethics (Philadelphia: Jewish Publication Society, 1998), 29.

²³ For reasons which will be explained below, ʿAʾisha plays a much more significant role in Sunni Islam than in Shiʿism. While the challenges pertaining to law, praxis and religious authority faced by Shiʿa Muslim women are similar to those faced by Sunnis, this dissertation will focus on the text-study experiences and academic writings of Sunni Muslim women for the following reasons: a) the vast majority of female exegetes writing on Islamic texts in English for a North American audience are Sunni, and b) the vast majority of my text-study group participants were Sunni. Notably, the insights of Yasmin, a Shiʿa participant, are discussed in some detail in Chapter 4, but even in her case, she only became Shiʿa as an adult, so her exposure to Islamic texts in her formative years were primarily Sunni sources. Lastly, given that marriage and divorce laws in Judaism and Islam figure prominently in this study, the role of mutʿa, or temporary marriage, in Shiʿism is a complicating factor, which cannot properly be addressed here. For a feminist reading of Shiʿa law and its impact on women in contemporary Iran, see Ziba Mir-Hosseini, Islam and Gender: The Religious Debate in Contemporary Iran (Princeton: Princeton University Press, 1999). On Shiʾi marriage laws, including mutʿa, see Shahla Haeri, Law of Desire: Temporary Marriage in Shiʾi Iran (Syracuse, NY: Syracuse University Press, 1989).

Her memory, as well as the depth of her religious knowledge, receive unequivocally high praise from classical male scholars. Regarding her reliability and authoritativeness, the ninth century jurist al-Shaf`i remarked, “If there is a tradition contradictory to `A`isha’s it would be obligatory on both of us to accept her tradition rather than another, for her tradition should be the standard according to which you and I make our choice.”

Accepting traditions attributed to `A`isha in this way was no small matter. As Leila Ahmed has observed, “To accept women’s testimony on the words and deeds of the Prophet was to accept their authority on matters intended to have prescriptive, regulatory relation to mores and laws [for the entire community].”

`A`isha is portrayed in the Hadith not only as a valuable repository of religious knowledge who could be consulted as an authority on matters or spiritual significance, but as a serious and dedicated student as well. In Bukhārī ’s vast collection of authentic Hadith known as the *Saḥīḥ*, we are told, “When `A`isha heard anything which she did not understand, she used to ask again till she understood it completely.” The text then describes her as attempting to clarify a particular teaching about the Day of Judgment with her husband, “`A`isha said: "Once the Prophet said, "Whoever will be called to account (about his deeds on the Day of Resurrection) will surely be punished." I said, "Doesn't Allah say: "He surely will receive an easy reckoning?" "" Interestingly, `A`isha’s question to the Prophet is actually phrased as a refutation of his teaching. While the Prophet had taught that those who are called to account for

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25 Ibid, 53-55. See in particular an implied debate played out in several hadith between `A`isha and other Companions such Abu Huraira about what nullifies one’s prayer. “Abu Huraira reported: The Messenger of Allah (may peace be upon him) said: A woman, an ass and a dog disrupt the prayer, but something like the back of a saddle guards against that.” *Saḥīḥ Muslim*, Book 4, 1034, trans. Abdul Hamid Siddiqui, [www.hadithcollection.com](http://www.hadithcollection.com) (accessed 19 Dec 2012). `A`isha’s response is reported in *Saḥīḥ Bukhārī*, “Narrated By ”A` isha : The things which annul the prayers were mentioned before me. They said, "Prayer is annulled by a dog, a donkey and a woman (if they pass in front of the praying people).” I said, “You have made us (i.e. women) dogs. I saw the Prophet praying while I used to lie in my bed between him and the Qibla. Whenever I was in need of something, I would slip away, for I disliked to face him.” Volume 1, Book 9, Hadith 490, trans M. Muhsin Khan, [www.hadithcollection.com](http://www.hadithcollection.com) (accessed 19 Dec 2012).


29 Idem.
their deeds on the Last Day will be punished, ‘A’isha quotes a Qur’anic verse from Sura 84, which seems to indicate the opposite, that those who are presented with a record of their deeds will be rewarded. The Prophet then explains that there is no contradiction in these teachings; the punishment is for those who argue about what their deeds are, not those who are simply presented with a record of their deeds as is being described in the verse cited by ‘A’isha.

This source is fascinating in that it clearly applauds ‘A’isha for her punctiliousness and her sincere desire to understand a religious principle. It also speaks to the perceived depth of ‘A’isha’s religious knowledge. This tradition describes her as being so well versed in Qur’anic teachings that she is able to spot an apparent discrepancy between the revealed text and a saying of the Prophet. It is important to note that this hadith does not criticize her for her impudence in directly challenging her husband, the community’s highest authority in the human sphere. Rather, her question is viewed as part of her legitimate and careful pursuit of knowledge. Also noteworthy, is the fact that the Prophet is portrayed as responding to her just as he would to any disciple.

**Beruriah and ‘A’isha: An Inescapable Legacy**

As these sources illustrate, Beruriah and ‘A’isha are not merely mentioned in passing in classical Jewish and Islamic texts, and they each seem to be taken seriously as textual authorities in several of the traditions associated with them. So then it should come as no surprise that when it comes to contemporary debates about Jewish and Muslim women’s religious authority and their participation in the study and interpretation of classical religious texts, Beruriah and ‘A’isha are often cited as historical precedents and exemplars by female academics, community activists and lay practitioners. Historian Yvonne Haddad has remarked, “a new generation of Muslim women [who] have acquired an Islamic literacy – through the study of the Qur’an and the Hadith…are taking as their role models the founding mothers of Islam – the Prophet’s wives [including] ‘A’isha”. Mareike Winkelmann has also noted the way ‘A’isha has been strategically

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30 See Q 84:8-12. The text explains that those who are presented with an account of their deeds in their right hand will rejoice, while those who receive the record of their deeds behind their backs are bound for the fires of Hell.

deployed “as a scholar” and “most prominent role model for women” in the writings of Syed Abul Hasan Ali Hasani, an influential Indian educational reformer with ties to a well-established madrasa for young Muslim girls.32

In a similar vein, Beruriah has been dubbed “the greatest Jewish woman scholar of all time”33 by Talmud scholar Tal Ilan, and educator Brenda Socachevsky Bacon has suggested that “the learning of Beruriah, the wife of Rabbi Meir, has turned her into a role model for those who view the relatively new phenomenon of women’s Torah study as an important value.”34 Indeed, Beruriah seems to have been embraced as a feminist icon by many contemporary Jewish women, especially those working in the field of Jewish education. In the last thirty years, Beruriah has been featured in several well-known women’s haggadot, texts traditionally read during the Passover meal, and has even been the subject of a feminist play in Israel.35 So, although she is a relatively minor figure, easily lost in the ‘sea of Talmud’, as the immensity of the rabbinic corpus has often been termed, she has made quite a splash in certain present-day circles.

That Beruriah and ʿAʾisha actually function in similar ways has been noted by historian Joel Kraemer, “As ʿAʾisha, an expert in prophetic traditions was an exemplar for Muslim women, so Beruriah, wife of the Tanna R. Meir, was a model for Jewish females.”36 Although Kraemer’s work explores the lives of medieval women as reflected in letters from the Cairo Genizah, based on the way that Beruriah and ʿAʾisha are deployed in the writings of the other scholars noted above, Kraemer’s comment could be seen as equally true today.

32 Mareike Jule Winkelmann, ‘From Behind the Curtain’: A Study of a Girls’ Madrasa in India (Amsterdam: Amsterdam University Press, 2005), 24, 74-75.


34 Brenda Socachevsky Bacon Responds. Nashim: A Journal of Jewish Women’s Studies & Gender Issues - Number 6, Fall 5764/2003, pp. 207-208


Indeed, Beruriah and 'A'isha offer a paradigm for thinking about the way in which contemporary women, whether Jewish or Muslim, contend with their textual traditions, and create new opportunities by insinuating themselves into religious spaces where they have not always been welcome. Perhaps not surprisingly, the two women played a prominent role in my own thinking about the research design that underlies this very study. I too could not help but be seduced by the interesting possibilities presented by these two figures. Between 2003 and 2009, I convened several meetings for groups of Toronto-based Jewish and Muslim women who were interested in studying classical religious texts together. When it came to choosing a name for these groups, I took my cue from some of the scholarly writings referenced above, and dubbed the meetings *When Beruriah Met 'A'isha* (WBMA), since the sessions signified the coming together of Jewish and Muslim women interested in probing scriptural traditions, much like the larger-than-life women scholars I kept coming across in my readings.\(^{37}\)

To be fair, neither of these women was new to me. It was as an undergraduate while taking a course on Judaism and Feminism at the Hebrew University in Jerusalem that I first encountered Beruriah in a compelling article by Rachel Adler, one of the key scholars featured in this study. Learning of Beruriah’s existence was like discovering buried treasure.\(^{38}\) Although I had attended a Toronto-based Jewish day school from kindergarten through to the end of high school – which meant that I studied Hebrew language and literature, Tanakh and traditional Torah commentaries, as well as Mishnah, Talmud, Jewish law and Jewish history in addition to the standard Ontario public school curriculum – no one had ever thought to mention Beruriah to me. And there were moments in my high school Talmud class where Beruriah’s wit and sharp tongue certainly could have come in handy. I had been a conscientious student and had always counted Talmud among my favourite subjects, but as my consciousness of feminism increased, my experiences of Talmud began to get more complicated. In my final year of high school, we studied Tractate Kiddushin which outlined Jewish marriage laws.\(^{39}\) Having come of age at the

\(^{37}\) Of course, for Beruriah and 'A'isha to have actually met, a relaxing of the time-space continuum would have been required. Beruriah is believed to have lived in what is now Northern Israel around the 2nd century CE, while 'A'isha bint Abu Bakr would have lived in Arabia in the 7th century CE.

\(^{38}\) The article in question was Rachel Adler’s “The Virgin in the Brothel and Other Anomalies: Character and Context in the Legend of Beruriah” *Tikkun* 3:6 (1988): 28-32

\(^{39}\) The Talmud curriculum at my high school included studying parts of Tractates Nekizim (dealing with damages), Betza (dealing with the ritual status of an egg born on the Sabbath) and Nashim (dealing with male-female
height of the “No Means No” campaign, a sexual assault awareness program, which emphasized the importance of consent between sexual partners. I recall being horrified when I learned that, according to the Talmud, a woman’s silence constituted consent in terms of accepting a proposal of marriage. When I raised an objection to this idea in class, my male classmates rolled their eyes, indicating that they were tired of my ‘feminist’ tirades, which would arise frequently during our lessons. I recall feeling quite isolated at that moment. Although the discovery of Beruriah a few years later did not lessen the sting of that experience, it at least made me feel that, as a female who enjoyed studying Talmud, I was not merely eavesdropping on an all-male conversation that was never meant to include me.

My familiarity with ‘A’isha came later when I began studying Islam more seriously as a Master’s Student. I was struck by, and envious of, her unmistakable prominence in both the Hadith as well as in the Islamic historical record, and that her perceived expertise ran the gamut from issues of ritual purity to inheritance, to rules of prayer, marriage, and fasting. But the more I read about Beruriah and ‘A’isha in academic texts, the more I was fascinated by their similarities. Given that both she and Beruriah received high praise from their male counterparts, but that they likewise, as we shall see, developed a reputation for being textual troublemakers, I wondered what a conversation between these two women scholars might look like. I surmised they might have lots to talk about, as inquisitive women from learned and well-connected families, actively parsing texts and struggling with their very gendered meanings in a virtually all-male environment.

Of course, for Beruriah and ‘A’isha to have actually met, a relaxing of the time-space continuum would have been required. Beruriah is believed to have lived in what is now northern Israel around the second century CE, while ‘A’isha bint Abu Bakr would have lived in Arabia in the relationships). This format is consistent with the curriculum set out in the Polish yeshivas of the 1700s. See Jay Harris, “Talmud Study” in The YIVO Encyclopedia of Jews in Eastern Europe (accessed 16 January 2012).

In Canada, this widely publicized campaign came on the heels of the ruling in the R. v. Seaboyer case which examined the constitutionality of laws which were meant to protect victims from having information about their sexual history submitted as evidence. In the wake of that case, the section of the Criminal Code of Canada dealing with sexual assault was amended to include a preamble which outlined in more detail what constitutes consent. See An Act to amend the Criminal Code (sexual assault), S.C. 1992, c. 38; Kent Roach, Due Process and Victims’ Rights: New Law and Politics of Criminal Justice (Toronto: University of Toronto Press, 1999), 172.

b. Qidd. 12a-13b
seventh century CE. Since this was obviously not possible, I convened a meeting of their spiritual descendants instead; I brought contemporary Jewish and Muslim women together to study and share their experiences of reading gender and law in classical Jewish and Islamic texts. At the start of each new session, I would introduce the women in the title of group and describe them as fitting precursors to the work we were about to do ourselves. Although none of the participants themselves derived their inspiration for scripture study from Beruriah or ‘Aʾisha, they agreed that they were compelling figures to contemplate in the context of a group that would touch on Jewish and Muslim women’s gender, ethno-religious and socio-political identities. The reader shall meet some of the women participants in these text-study groups, and the female text-scholars who would inspire them, in the chapters that follow.

But taking a step back, what does it really mean to have these two iconic women functioning as exemplars both in my own work as well as in contemporary discourses more generally? Other than providing a helpful historical precedent for those Jewish and Muslim women who would likewise wish to be recognized for their interpretive acumen and regarded as religious authorities in their respective communities, what other baggage comes along for the ride when Beruriah and ‘Aʾisha are invoked?

Exceptional Women are Just That: Beruriah & ‘Aʾisha as Exceptions

To begin with, exemplars can serve as a double-edged sword for women. As scholar Heidi Ford has remarked, “The positive representation of the feminine in a religious tradition does not correlate to the improvement in the socio-historical status of women. In fact, just the opposite can be argued: that the promotion of exemplars…further the subjugation of ordinary women.”

Indeed, in many respects, Beruriah and ‘Aʾisha are positioned as exceptions within the textual traditions of Judaism and Islam, so anyone trying to re-cast their historical examples as an argument for the increased participation of women as religious authorities and interpreters in Jewish and Muslim communities may find that the strategy backfires.

To be sure, Jewish and Muslim women were not always openly embraced as producers and interpreters of religious knowledge in classical Jewish and Islamic sources. The Talmud contains an infamous mishnah, in which the sage Ben Azzai insists that a man is required to teach his daughter Torah, while his opponent Rabbi Eliezer asserts that “whoever teaches his daughter Torah it is as though he taught her lasciviousness.”

Sadly, it is Rabbi Eliezer’s opinion that gets elaborated on in the ensuing pages of the Talmud, giving his statement an authoritative edge over the more permissive approach of Ben Azzai. Although not an outright prohibition, it was the damning perspective of Rabbi Eliezer that would reverberate in traditional circles whenever the subject of women and Torah study reared its head through the ages.

It bears pointing out that classical sources, which aid in the construction of a community’s normative, idealized world, are not necessarily reflective of women’s actual access to religious learning at any point in history. See Spellberg, pg. 9 “We cannot deduce from the male debate about ‘A’isha the experience of real medieval Muslim women’s lives, or surmise positions they might have articulated...” For the same with regards to Jewish women, see for example, Ross Kraemer, “The assumption that rabbinic texts reflect even the social reality in the towns and villages in which rabbis lived, let alone the social reality of Jewish communities removed from the rabbis in both space and time has been subject to increasing challenge.”

Nevertheless, the texts do set parameters for acceptable behaviour, and consequently, their role in either limiting or enlarging women’s sphere of engagement cannot be ignored. As well, classical texts dealing with the ‘nature of woman’ are some of the ones most often critiqued and deconstructed by the feminist scholars examined in the following chapters, so they serve as a good introduction to the ‘textualized misogyny,’ in the words of Asma Barlas, that female exegetes need to confront in their work.

It is noteworthy that Ben Azzai’s position is supported by a passage in the Tosefta, a non-authoritative compendium of rabbinic material dated to the tannaitic period, which putatively has no difficulty with women – even menstruating women – engaging in the study of scripture. The text involves a discussion of whether men who have recently ejaculated may engage in Torah study. Since menstrual blood and semen had a similar symbolic valence in biblical and rabbinic culture, the two bodily emissions are discussed together, “Men with an impure discharge, menstruants and women who have just given birth are permitted to read from the Torah, Nevi'im, and Ketuvim, to study the mishnah, the midrash, the halakhot, and aggadot, but a man who has recently ejaculated may not ” See t. Ber. 2:12. However, in the more official, Talmudic rendition of this same text, women have been written out, menstruants having been replaced with “men who have sex with menstruants.” See b. Ber. 22a. Boyarin and others have commented on how the erasure of women from the text has yielded a passage which actually makes no sense, as having sex with a menstruant was actually prohibited by biblical law. Plus men who have had sex have also had a seminal emission, so by removing the menstruant from the text, the passage ends up suggesting that recent ejaculants both can and cannot study Torah. See Daniel Boyarin, Carnal Israel: Reading Sex in Talmudic Culture. (Berkeley: University of California Press, 1993), 181.

The debate between Ben Azzai an Rabbi Eliezer arises in the context of how to deal with the sotah, or the suspected adulteress. For two different ways of approaching and interpreting the text, see Daniel Boyarin, Carnal Israel, 170-180 and Judith Hauptman, Rereading the Rabbis, 22-23.

See for example, Maimonides’ use of this text in his masterful codification of Jewish law, the Mishneh Torah. In a sub-section of the work specifically dealing with Torah study, Maimonides advises against women being taught the Written Torah and strongly dismisses their studying of the Oral law since, “the minds of most women are not geared to learning and will turn the words of the Torah to foolishness according to the poverty of their understanding. The sages said whoever teaches his daughter Torah, it is as if he taught her tiflut [lasciviousness].”
Muslim women, on the other hand, do initially seem to fare a bit better in primary Islamic sources when it comes to religious literacy, as there do not seem to be any explicit prohibitions pertaining to women’s access to scripture. In fact, the women in the Prophet’s inner circle, such as his wives and other female relatives, were regarded as particularly trustworthy sources when it came to transmitting Prophetic traditions, perhaps because of their unique access to the Prophet’s daily practice. Nonetheless, an oft-quoted hadith cited in Bukhārī’s *Sahīh* reads as follows,

> Once Allah’s Apostle went out to the Musalla (to offer the prayer) for 'Id-al-Adha or Al-Fitr. Then he passed by the women and said, "O women! Give alms, as I have seen that the majority of the dwellers of Hell-fire were you (women)." They asked, "Why is it so, O Allah’s Apostle?" He replied, "You curse frequently and are ungrateful to your husbands. I have not seen anyone more deficient in intelligence and religion than you. A cautious sensible man could be led astray by some of you." The women asked, "O Allah’s Apostle! What is deficient in our intelligence and religion?" He said, "Is not the evidence of two women equal to the witness of one man?" They replied in the affirmative. He said, "This is the deficiency in her intelligence. Isn’t it true that a woman can neither pray nor fast during her menses?" The women replied in the affirmative. He said, "This is the deficiency in her religion." 47

Although the Qur’an does indeed rule that the testimony of two women were equal to that of one man, it does not cite women’s “deficient intellect” as the rationale behind this ruling.48 While prominent contemporary scholars have convincingly questioned the authenticity of this hadith,49 one must nevertheless confront the fact that this text was preserved in the esteemed and canonical Hadith collection of al-Bukhārī, recognized as authoritative by the vast majority of

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47 Bukhārī, *Sahīh*, Volume 1, Book 6, Number 301. For an alternate version, see Bukhārī, *Sahīh*, Volume 3, Book 48, Number 826.

48 See Q 2:282.

49 Khaled Abou El Fadl points out the contradiction in this text: If it is the technicalities of the law itself that leads to the deficiencies in women, then women cannot be held responsible for this, and so why would they then make up the majority of Hell’s inhabitants? Abou El Fadl seems to suggest that tradition was obviously cobbled together over time to fit with a certain agenda of the compilers. See Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority and Women* (Oxford: OneWorld, 2001), 226. G.H. Juynboll takes a different approach by examining the isnads associated with the tradition in the various authoritative Sunni collections of hadith. See G.H. Juynboll, *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early Hadith*. Cambridge, UK: Cambridge University Press, 1983.
Sunni Muslims. So although Muslim women’s involvement in hadith transmission meant that they could never entirely be erased from the preservation of religious knowledge, traditions such as these were, as Asma Barlas puts it, “trotted out” throughout history whenever male scholars wanted to argue against women’s full participation in the arena of religious learning or community leadership.

With this as the textual backdrop, one can certainly understand why contemporary scholars and community activists hoping to enlarge women’s sphere of participation would look to the examples of Beruriah and ‘A’isha, two women who are also included in the classical literature and whose textual knowledge, expertise, and valorization fly in the face of the more negative portrayals of women and religious literacy. However, Beruriah and ‘A’isha were (and remain) exceptional women — women who departed from conventional depictions of females and femininity in classical Jewish and Islamic sources.

50 Bukhārī ‘s Saḥīḥ, along with the compilation of Muslim b. al-Hajjaj (d. 875 CE,) ranks as one of the most authoritative of the six Hadith collections recognized as authentic among Sunni Muslims. There is some variation in which six collections of Hadith are considered canonical, but after the two Saḥīḥ (of Bukhārī and Muslim), the others are thought to include the Sunans of Abu Dawud and al-Nasai, and the Jami of al-Tirmidhi. The sixth collection is variously understood as one of the following: the Sunan of Ibn Majah, the Sunan of al-Daraqutni, or the Muwatta of Malik. For more on the notion of canonization vis-a-vis the Hadith see Jonathan Brown’s Canonization of al-Bukhārī and Muslim: The formation and Function of the Sunni Hadith Canon (Chicago, University of Chicago Press, 2006),10. On the notion of whether the Hadith collections fit the Western academic definitions of canon, Brown observes, “It is ultimately the way the Muslim community has treated the Saḥīḥayn [the two ‘Saḥīḥs’, Bukhārī and Muslim], and the functions that they have served, not any external and sometimes rigid definitions of canon, that determines the works’ canonicity.” Ibid, 36.


52 See for example an allusion to this hadith in an influential eleventh century text on the laws of Islamic governance by Abu’l Hasan al-Mawardi. In it, Mawardi reviewed the laws concerning the head of an Islamic state, or imam, and the roles and qualifications of his appointed ministers, or wazirs. In discussing the job of the executory wazir, whose role was basically limited to carrying out the orders of the Imam, Mawardi indicated that this type of wazir may be chosen from among slaves or even from among the dhimmi, those non-Muslims living in Muslim lands. However, Mawardi was clear that such an appointment is not open to a woman. As he explained, “It is not permitted for a woman to undertake this office even if she has sufficient experience in such matters… application of judgment and resoluteness of determination are diminished in women.” See Abu’l-Hasan al-Mawardi, Al-Ahkam as-Sultaniyyah: The Laws of Islamic Governance, trans. Asadullah Yate (London: Ta-Ha Publishers Ltd, 1996), 44. Although Mawardi cited as his primary prooftext the Abu Bakrah hadith, “A people who entrust their affairs to a woman will not be successful,” echoes of this other tradition discussing women’s ‘diminished’ intelligence are also clearly present. But the hadith comes up more clearly in the work of Ibn al-Hajj a Maliki jurist who lived in 14th century Cairo. Ibn al-Hajj was well known for his negative views on women. In his 4-volume treatise al-Madkhali, he was critical of all forms of bida, or religious innovations, which he saw practiced among his Cairene contemporaries. Ibn al-Hajj was particularly angered by those who give credence to the opinions of women, citing the hadith that women are “lacking in mind and religion” as proof that to pay too much heed to women is a defiance of shari’a. See Ibn al-Hajj, al-Madkhal al-shar’ al-sharif ala l’madhabib al-arba’a, 4 vols. (Cairo: al-Matba’a al-Misriyya, 1929 ) 1:146, 241.
Beruriah & ‘A’isha: Legacy or Liability for Ordinary Women?

Indeed, to return to Heidi Ford’s point above, deploying Beruriah and ‘A’isha as role models is a slippery slope, as it could easily be argued that these two females rose above the social limitations placed upon them to attain both specialized knowledge as well as levels of respect and esteem from their male colleagues in the religious sciences despite their gender. Two exceptional women can easily be dismissed as a) an anomaly; b) as being part of an idyllic past unattainable to most laywomen, and c) having superior knowledge only because of their links to, identifications with, and their dependency on the great and influential men in their lives.53

Indeed, no ordinary Muslim woman can hope to have the status, respect and privilege granted to a woman who was both one of the Prophet’s most beloved wives and the daughter of the first rightly-guided Caliph, Abu Bakr. ‘A’isha comes from the period of the pious Salaf, the early adherents of the Prophet, whose example is to be followed, but who can never quite be emulated in terms of piety. And while a contemporary Jewish woman could conceivably be linked to two different prominent rabbis, as wife and daughter, just as Beruriah was according to the Babylonian Talmud, her knowledge is described in such lofty, exaggerated terms, that no one could expect to surpass her, no matter how much access she might have to the revered scholarly minds of her day.

Furthermore, it is important to note that both women are constructed through the lenses and voices of male scholars – these women left behind no writings of their own – so in some respect, they are more foils for the hopes, fears and anxieties of men at the time that the Talmud and

53 Certainly, there have been scholars who have been skeptical of and tried to minimize the contributions of both Beruriah and ‘A’isha in this way. Speaking of Beruriah’s landmark legal ruling on the ritual purity of the oven, David Goodblatt has argued that Beruriah’s ruling “...need not indicate any formal education at all. Details of rabbinic law relating to the kitchen and house would be known by a woman who grew up in a rabbinic household. Girls would learn these rules from their mother when they helped out with the housework.” See David Goodblatt, “The Beruriah Traditions” in Journal of Jewish Studies 26 (1975): 83. In a similar vein, Denise Spellberg has downplayed ‘A’isha’s tafsīr contributions, portraying her importance in the transmission of Prophetic reports as a perfunctory at best, wholly dependent on her “proximity [to the Prophet] and memory.” See Denise Spellberg, Politics, Gender and the Islamic Past: The Legacy of ‘A’isha Bint Abi Bakr, (New York: Columbia University Press, 1994), 52.
Hadith texts were compiled than any real representation of the perspectives of actual late antique or medieval Jewish and Muslim women.⁵⁴

That male scholars in both traditions perpetuated these depictions of smart women who often out-witted them is certainly worth further consideration on the part of those academics and activists hoping to deploy Beruriah and ‘Aʾisha as ‘feminist heroes’. But it is also worth noting that there is another aspect of Beruriah and ‘Aʾisha’s classical personas, which might warrant another, more nuanced reading of their historical examples: they were not simply ‘pedestalized’, or configured in ideal terms, in traditional Jewish and Islamic texts. Both women are implicated in sexual and political scandals, episodes which would cast a long shadow over their sexual/textual reputations, and would render them even more problematic as figures of emulation for later generations of women.

**Beruriah as Cautionary Tale**

The precariousness of Beruriah’s position as a female scholar within the rabbinic tradition is openly acknowledged by the Talmud itself in the following passage:

Rabbi Jose the Galilean was on a journey when he met Beruriah. “By what road” he asked her, “do we go to Lod?” She said to him, "Galilean fool! Did not the sages say, 'Do not talk too much with a woman'? You should have said, 'By which to Lod'?" ⁵⁵

Indeed, the text-within-a-text, which Beruriah quotes to teach Rabbi Jose a lesson on brevity actually highlights the rabbi’s fear of women as potential sites of danger. In a culture that viewed a woman’s voice,⁵⁶ hair,⁵⁷ and even her heel⁵⁸ as sources of sexual temptation, it was

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⁵⁴ On ‘Aʾisha as depicted by the male scholars of her day, see Denise Spellberg, “Although ‘Aʾisha’s name and example are frequently cited in these medieval sources for Islamic social legislation, we have no accounts authored by medieval Muslim women that attest their response to ‘Aʾisha as her legacy was represented to them for emulation or rejection. We cannot deduce from the male debate about ‘Aʾisha the experience of real medieval Muslim women’s lives, or surmise positions they might have articulated…” in Politics, Gender and the Islamic Past: The Legacy of ‘Aʾisha Bint Abi Bakr, (New York: Columbia University Press, 1994), 55. On Beruriah as a male rabbinic construct see, Rachel Adler, “The problem of Beruriah...is what it means that male rabbis transmitted a legend about a woman with a moral life like a man’s…Paradoxically, it is precisely the anomaly of such a creature as Beruriah that rendered her interesting to the rabbis. In their search for universally applicable principles, the sages continually formulated cases that burst the bounds of their generalizations…Imagineing Beruriah must be regarded as just such an effort – a striving for a more encompassing context, an outrageous test case proposed as a challenge to all contextually reasonable assumptions: What if there were a woman who was just like us?” in “The Virgin in the Brothel and Other Anomalies: Character and Context in the Legend of Beruriah” Tikkun 3:6 (1988): 28-32.

⁵⁵ b. Ber. 10a

⁵⁶ b. Ber. 24a; b. Qidd. 70a
recommended that men speak with women as little as possible. Women were presumed to wreak
sexual havoc wherever they went, thereby derailing men from their real obligations, namely, the
study of Torah. Coming out of the mouth of a woman who herself is renowned for her own
excellence and zeal in studying Torah, this statement sounds particularly ironic and absurd. One
could then certainly read Beruriah here as mocking not only Rabbi Jose the Galilean, but in fact
the whole rabbinic attitude towards women.

Which is perhaps why Beruriah’s story does not quite end there.

As an explanation for why Beruriah’s husband, Rabbi Meir, is later forced to flee the Land of
Israel, the Talmud simply states, “because of the Beruriah incident.” In the 11th century, the
revered rabbinic commentator Rashi offered an ingenious back-story to illuminate the Talmud’s
short-hand remarks: Rabbi Meir wanted to prove Beruriah wrong for mocking the sages’s dictum
that women are flighty, so he arranged for one of his students to seduce her. When she finally
gives in and learns of the ruse, she hangs herself. Consequently, Rabbi Meir, in disgrace, is
forced to leave the country. Although Rashi’s comments appear in the margins of the Talmudic
text, he is regarded as an exegetical heavy-weight, and thus his commentary is “a very central
margin indeed.” Thus, Rashi’s riff on a few mysterious words would succeed in squelching her
efficacy as a female role model for centuries. Still, the potency of Beruriah’s tale allowed for
something positive to be salvaged from this wreckage: the story about a woman scholar still
continued to be passed down through the ages, and, as Brenda Socachevsky Bacon has observed,
in recent years, her name has lent itself to a distinguished program of Talmud study for women
as well as a movement for religious Zionist women.

57 b. Ber. 24a
58 See b. Ned. 20a “Do not converse much with women, as this will ultimately lead you to unchastity...He who
gazes at a woman eventually comes to sin, and he who looks even at a woman’s heel will beget degenerate
children...”
59 See b. ‘Abod. Zar. 18b.
60 See b. Qidd. 80b. The statement arises in the context of a ruling that a man is not permitted to be alone in a room
with two women, since it would be easy for him to seduce both of them.
61 See Rashi on the words “ma’aseh Beruriah” in b. ‘Abod. Zar. 18b.
62 Boyarin, Carnal Israel, 186
63 See Brenda Socachevsky Bacon, “Reader Response: How Shall We Tell the Story of Beruriah’s End?” in
‘A’isha as Cautionary Tale

Although ‘A’isha is indeed revered as a transmitter of Prophetic traditions, her treatment in the larger Islamic corpus is similarly uneven. Like Beruriah, she too is associated with illicit behaviour when accidentally left behind in the encampment after a desert battle and returned home the next day by one of the soldiers in the Prophet’s army. Known as the ‘Affair of the Necklace,’ or ‘the Incident of the Slander (al-ifk)’ this story is retold in several hadith.64 Although Sunni interpreters would understand Q 24:4-17 as evidence that ‘A’isha was exonerated by a divine decree, the suspicion of infidelity would continue to hover over her in Shī‘a literature.65 But even among Sunnis she would remain a controversial figure due to her disastrous foray into communal politics. Her accusations against the fourth caliph, ’Ali, for mishandling the investigation into the murder of his predecessor would result in the first fitna, or civil conflict. The faction she lead against Ali was destroyed in the battle, and she herself only escaped retribution by ’Ali’s forces because of her honoured status as the Prophet’s widow. But her perceived political misstep would have dire consequences for women coming after her, as the oft-quoted hadith, “A people who place women in charge of their affairs will never prosper” would be associated with her actions.66

Beruriah & ‘A’isha as Texts Seeking Interpretation

Clearly then, the significance of these two complex women can be read in a variety of ways and their multi-layered narratives can be deployed to accommodate conflicting agendas, feminist or otherwise. As Denise Spellberg has observed, “All modern Islamic writing on ‘A’isha has the potential to carry explicit and implicit messages about the proper role of women, their behaviour,

64 See for example, Bukhārī, Sahīḥ, Volume 3, Book 48, Number 829.
65 For an examination of the way the figure of ‘‘A’isha has been used as a site for playing out Sunni-Shī‘a polemics, see Denise Spellberg, Politics, Gender and the Islamic Past: The Legacy of ‘A’isha Bint Abi Bakr, (New York: Columbia University Press, 1994).
66 Muhammad ibn ‘Abd Allah al-Bukhārī. Sahīḥ al-Bukhārī. Translated by M. Muhsin Khan. (USC-MSA Compendium of Muslim Texts: University of Southern California), Volume 9, Book 88, Number 219. http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/Bukhاري/ (accessed December 12, 2005). This tradition appears in several different forms, including, “Such people as ruled by a lady will never be successful” in Sahīḥ al-Bukhārī , Volume 5, Book 59, Number 709, and as “A people who place women in charge of their affairs will never prosper” in Muhammad Ibn Hanbal’s Musnad, 6 vols. (Cairo: n.p., 1895), 5: 38, 45. For Fatima Mernissi’s adept deconstruction of this text, see Chapter 3.
and status. Using ‘A’isha as a prism, the most unsubtle of these works may utilize her persona to argue either for change or enforcement of a variously defined Islamic status quo.\(^{67}\) Although Denise Spellberg’s comments are specific to ‘A’isha’s depiction in Muslim communities, the same might be said about Beruriah’s portrayal in Jewish communal writings as well. So while one could regard Beruriah and ‘A’isha as limited in their strategic usefulness either as perfect, inimitable women or as flawed, cautionary tales, it is important to recall that the meanings of their textual personas are not fixed. Just as Beruriah and ‘A’isha were both products of patriarchal environments as well as cultural critics of those societies, for present-day practitioners, Beruriah and ‘A’isha can serve as both textual products but also as the very tools needed to deconstruct those texts. Consequently, much like the classical religious texts in which they appear, Beruriah and ‘A’isha can be re-read, re-interpreted, and rehabilitated or rejected by contemporary Jewish and Muslim women.

Still, even if they are rejected as models, even in places where references to them are not made explicit, they continue to operate, delimiting what it means to be both a female and a scholar in communities organized around texts and textual exegesis; communities which made little room for women to participate in these defining activities. Although they do not cite Beruriah and ‘A’isha directly as influences, the Jewish and Muslim female exegetes and laywomen I profile in the chapters that follow redefine what it means to be Beruriah or ‘A’isha every time they undertake a new scholarly endeavor or empower themselves to adapt communal practices to better reflect more inclusive and egalitarian values.\(^{68}\) As we shall see in the ensuing pages, by leading mixed-gender prayers for the first time, publishing the first English-language exegetical work on the Qur’an by a woman, or by becoming the first Jewish woman to graduate from a university with a doctorate in Talmud, Amina Wadud and Judith Hauptman each succeeded in widening the tiny spaces first made available by Beruriah and ‘A’isha and the scholars, teachers and students who continued to re-tell and reframe these intriguing traditions about female

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\(^{67}\) Spellberg, *Politics, Gender and the Islamic Past*, 17.

\(^{68}\) Of the ten female exegetes featured in Chapters 2 through 4, nine of them do not dwell on either Beruriah or ‘A’isha in their writings. However, as indicated above, Rachel Adler wrote a seminal article on Beruriah in *Tikkun* in 1988. Although she sees Beruriah’s story as a heart-breaking one, and understands future generations as being tasked with making “a world in which a Beruriah could thrive” (105), Beruriah is not a central focus in her later writings on halakhic reform. Still, while Adler herself does not speak of Beruriah as an ‘influence’ per se, it is probably not incidental that, as a feminist theologian and scholar of rabbinic literature herself, one of Adler’s earliest significant works is on the first female scholar recorded in the Talmud.
exegetes. 69 Similarly, when Toronto-based laywomen challenge the ideas coming from the pulpits of their local mosque and synagogue, or use their own knowledge of texts and other extra-textual sources to redefine how they eat, dress and pray as Muslims and Jews, they are pushing the boundaries of how each community views women, traditional praxis and authority, forcing us to confront what it means to be a Jewish or Muslim woman scholar in the 21st century. As will become clear, these acts of empowered interpretation and religio-legal reform among both laywomen and exegetes arise from a similar source: a ‘textual confidence’, which is a strange alchemy of a solid traditional and secular education, strong familial and communal supports, but also related to one’s geography, conceptions of gender and perceptions of authority.

A Two-Pronged Method: Comparative Literary Analysis and Feminist Ethnography

In that vein, this work explores these diverse expressions of religious text-study among women and how this engagement with text affects women’s relationships with praxis, religious law and power in North American communities of Jews and Muslims. There are two modes through which I examine women’s interpretive activities: the first approach focuses on scholars and involves a comparative textual analysis of women’s academic writings on religious texts, while the second approach utilizes feminist ethnography to zero in on the textual experiences of Jewish and Muslim laywomen who spent time studying religious texts together.

Situating the Research and the Researcher

Before I turn to a fuller description of the structure of the dissertation and each of its chapters, I will provide a brief account of my own relationship to these intersecting fields of texts, praxis, authority and religious law in both intra-faith and interfaith contexts, as well as a short history of the text-study groups which serve as a major source of ethnographic data in this work. Given the

69 The distinction of being the first woman to publish an exegetical work on the Qur’an in the Muslim world likely goes to ‘A’isha Abd al-Rahman (aka, Bint al-Shati), an Egyptian academic, journalist and magazine editor. She was among the first women to benefit from the renewed focus on the education of girls and women in the 20th century described in the beginning of this Introduction. Making use of her background in Arabic literature, Abd al-Rahman would author three separate works pertaining to Qur’anic exegesis between 1962 and 1969, including Al-Tafsir al-Bayani li al-Qur’an al-Karim (meaning “The Rhetorical Meaning of the Noble Qur’an”) which provides an interpretation of 14 short suras in the last section or juz of the Qur’an. However, Wadud would be the first to make issues of gender an explicit priority in her reading of the text.
feminist and post-structuralist trends in anthropology of the last few decades which attempt to dismantle the notion of anthropologist as ‘objective observer’ with a god’s eye view, whose own background and biases have no impact on his or her research subjects, it is prudent to situate myself in relation to my subject matter, provide a bit of my own personal history and reflect a bit on how that contributes to the structure, methodology and findings of the project. While some theorists view “confessional modes of self-representation” with suspicion, sometimes arguing that they do little to really attend to the power dynamics between researcher and researched, I am following the position of feminist ethnographer Nancy Naples, who contends that “the process of critical reflection informed by the critical insights of feminist standpoint epistemologies can help uncover the complex dynamics involved in the production of everyday life.” In keeping with other models of “reciprocal ethnography”, I also provided my informants with a copy of their comments to ensure that they felt that their words and life stories were properly represented in my research. 

Ethnic/Cultural Background
Like many of the Jewish women I interviewed, I grew up in a traditional Ashkenazi Jewish family in Toronto. My maternal grandparents were Holocaust survivors and so from a very young age words like ‘Kristalnacht’, ‘ghetto’ and ‘deportation’ were part of my vocabulary. Yiddish came from both sides of my family – it was my mother’s mother tongue, and even my paternal grandparents who had been born in Canada often spoke Yiddish around my father. We kept kosher in our home and attended a Conservative synagogue regularly, going first on major holidays only, and for a time in my childhood and young adulthood, going every Saturday too.


71 Nancy Naples, Feminism and Method: Ethnography, Discourse Analysis and Activist Research (New York: Routledge, 2003), 44.

Despite prohibitions against driving on the Sabbath, like most Conservative Jews, we would drive to synagogue and I vividly recall ducking in the car as we would pass more Orthodox friends who lived in my neighbourhood.

**Religious Education**

As was noted above, I am the product of a Jewish day school education. Like many of my interviewees, I studied in an institution patterned after those first schools developed by Samson Rafael Hirsch in Germany, with two significant differences: a) the school I attended was co-educational, and b) although the philosophy of the school was Orthodox, many of the pupils who studied there were not. At one point in my childhood, I was placed in a class that was predominantly made up of children from Orthodox families. While this was disorienting at first, and made me highly aware of the differences between their upbringing and my own, it brought into sharp focus the fact that there were Jews out there who were far more traditional than me, but also that there were those who were less so. As a result, by the time I was in my early 20’s I knew how to adapt and behave myself in a variety of Jewish settings – whether Ultra-Orthodox or ultra-acculturated – and everything in between.

**Jewish & Feminist: Inevitable Confrontations with Religious Authority**

As a studious young girl and budding young feminist, I often found myself at odds with rabbis and teachers in these more Orthodox educational settings. I have already mentioned the dissonance and betrayal I felt when I first learned that traditional halakha did not share my twentieth century conceptions of sexual ethics and consent. However, I got my first taste of the possible incompatibility of certain expressions of Judaism and feminism at the age of twelve during my bat-mitzvah ceremony when I read directly from the Torah at the Western Wall in Jerusalem. Indeed, my bat-mitzvah experience itself is illustrative of the kinds of tensions that exist for both the laywomen and many of the academics profiled in this study – women who are knowledgeable of and committed to traditional praxis, yet who are also deeply troubled by the limitations placed on them in the spheres of religious leadership and participation.

My bat-mitzvah was held in 1987. Since the Western Wall is operated as an Orthodox synagogue and is under the purview of the Israeli Rabbinate, strictly speaking, women are prohibited from reading aloud from the Torah. In order to circumnavigate these restrictions, we held my Torah
reading ceremony on a Thursday afternoon, rather than during the morning service, which is when Torah reading typically takes place according to halakha. I chanted the Torah portion and the rabbi chanted softly along with me, so as to mollify any on-lookers. I vividly recall several Haredi men watching with curiosity and my hand shook as I read from the Torah, fearing that we would be asked to stop at any moment. I also remember a few female overseas students congregating around us with tears in their eyes.

Although we were aware at the time that these were somewhat radical acts, the climate of fear around women’s participation and contestations of sacred space at the Wall have significantly intensified since then. On August 19, 2012, four women who are regular attendees of the monthly Women of the Wall Torah readings, which meet to read Torah near the Western Wall on Rosh Hodesh, the first day of the new Hebrew month, were arrested for wearing the traditional black and white tallit, rather than the more colourful prayer shawl which tends to be favoured by women who have adopted this ritual in recent decades. They were charged with “disturbing the public peace according to regulation 201 A4 of the Israeli legal code, the punishment for which is six months in prison, and the violation of regulation 287A by performing a religious act that ‘offends the feelings of others’ [with a punishment of] up to two years in prison.”73 So while women in both Jewish and Muslim communities have broadened the spheres available to them, there is still tremendous opposition to their taking on religious roles and activities once defined as male. As we shall see, the following research on women exegetes and laywomen will only serve to reinforce that observation.

Israel/Palestine and Jewish-Muslim Encounters
Another issue I had in common with many of my respondents was that my relationship with the State of Israel was a complicated one. As a child, I was taught to embrace Israel uncritically; it was only once I was a teenager that I began to question the Zionist narrative that I had been presented with. I lived in Jerusalem for three years, first in 1993-1994 (when I learned about Beruriah) and then again from 1998-2000 (when I began to learn more about ‘A’isha). Both times I was there in an educational capacity. The first time I was doing a year abroad and the

second I was pursuing a Master’s degree in Comparative Religion. While I naturally learned more about Judaism while I was there and improved my Hebrew, I also began studying Islam and learning Arabic, premised on the idea that if I was going to live there, it was important to be able to speak to my neighbours in their own languages. I took the opportunity to visit many different synagogues and Jewish communities, but also churches, mosques and Arab communities. I travelled to Egypt, took courses on the history of the Palestinians, went to Bethlehem, took Arab buses and taxis and walked through Arab East Jerusalem as often as I could. To say that I was not fearful would not be honest, but I had a friend, a tough, curious Protestant from Chicago who had not grown up with the same baggage and prejudices that I had, and I boldly followed her lead, very consciously trying to clear my head of the preconceived ideas – especially about Arabs and Muslims and Germans – with which I had been raised. It was as if I was going through a mental list and one by one intentionally exposing myself to people and things that I had been told were suspect throughout my childhood.

I experienced several watershed moments in that first year in Israel. One of the most memorable episodes involved a visit to Givat Haviva, a place that held conferences for feminists, as well as gays and lesbians, and where Jews and Israeli Arabs lived, worked and studied together; the visit there planted a seed which I would only be able to cultivate many years later. This was also the year when Yitzhak Rabin signed the Oslo accord with Yasser Arafat on the White House lawn. I remember gathering in the centre of town to watch the ceremony, but when there was something wrong with the video feed, running frantically in and out of shops in search of a working television. Ultimately, I stumbled upon a hair salon with cable and I, along with the hair stylist, one patron and a handful of overseas students stood there in awe, watching that

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74 In the aftermath of the Holocaust, a myriad of state-sponsored cultural, social and academic exchange programs were established to help improve relations between Israel and Germany. Such programs have been so successful, that between the 1950’s and 2006, it is estimated that approximately five hundred thousand youth participated in Israeli-German exchange programs, according to researcher Lily Gardner Feldman. See Germany’s Foreign Policy of Reconciliation: From Enmity to Amity (Plymouth, UK: Rowman & Littlefield, 2012), 157. As a result of these initiatives, there were a significant number of German students attending my university program in Jerusalem. In becoming acquainted with many of them, I was given new insight into what it is like to grow up in Germany with the shadow of the Holocaust bearing down on you. While I had grown up surrounded by the painful narratives of Jewish survivors, learning of the feelings of shame and guilt experienced by German youth who were roughly my age was new for me. The feelings of German guilt I first encountered in Jerusalem are echoed in the comments of Petra, a German Muslim participant in WBMA, whom the reader will meet in Chapter 5.
historic handshake with Bill Clinton looming over the two shorter men like a knowing and angelic presence.

There was euphoria in the streets for weeks after that, much singing of nationalistic songs and flag-waving, which to my new German friends was both ominous and uncomfortable. This wave of optimism would last until February of that year when an American-born settler named Barukh Goldstein would open fire on a group of Muslims praying at a Hebron mosque, built next to the site of Me’arat Hamachpelah, traditionally regarded as the site where the biblical patriarchs and matriarchs were buried. So it is understandable that the events of that year had a profound impact on me and my outlook towards both Judaism and Islam, not to mention Jewish-Muslim relations. But to say that the path I set on thereafter was an inevitable response to those experiences would be incorrect. I recall encountering a young Orthodox woman whom I knew on the plane home to Toronto that summer, whose name, ironically enough, was Tziona, meaning ‘towards Zion’. We caught up on mutual acquaintances and chatted breezily until we both took out our notebooks to exchange contact information. Both of us had bumper stickers and catchy political slogans plastered across our notebooks, but it appeared that we were on opposite poles of the political spectrum. My stickers said “Peace Now”, “Co-existence”, and featured an Israeli flag alongside a Palestinian one, while hers said “We are not moving from the Golan” and “Yesha [an acronym for Judaea, Samaria, and Gaza] is here”, suggesting that all of Israel is non-negotiable territory. We exchanged phone numbers but never contacted one another.

For the next several years, I tried fruitlessly to begin a Jewish-Palestinian dialogue in Toronto. I was young and had no resources, so I kept turning to established organizations like the Jewish and Arab Student Federations at York University to help me get the project off the ground. But interest was minimal. I put that work on hold for a few years, engaging with it once again in Jerusalem while I did my MA degree. I got involved in a few activist projects involving Jews and Palestinians, including a tutoring program for Palestinian children, and a women’s dialogue group. I soon discovered that the progressive, Modern Orthodox synagogue near my apartment, which served mostly an Anglo-American immigrant population, was hosting a program called Beit Midrash-Madrasa. One evening the Chief Rabbi of Haifa spoke on a panel together with a Sufi Shaykh, but on another occasion the synagogue convened a panel of Jewish and Muslim
women speaking about issues of mutual concern in Judaism and Islam. I was riveted and was determined to figure out a way to continue such a valuable conversation. I made inquiries among people I trusted about how to bring Jewish and Muslim women together in Jerusalem to study classical texts, but the political obstacles were far too great. Where would we meet? Would the Muslim women be from East Jerusalem or the West Bank? If the latter, what about getting through checkpoints? If the former, would the women need to be accompanied by men? What if there were curfews in effect? If we met in East Jerusalem would the Jewish women even come? Frustrated by these realities, I again put the project on hold.

Upon returning to Toronto, I hoped to continue some of the dialogue and activist work that had engaged me in Jerusalem. I joined an active Palestinian-Jewish dialogue group and got involved in some other grassroots, social justice organizations that worked to educate Jewish organizations about the daily realities of Palestinians. These initiatives, while well-intentioned, were frustrating for me. The dialogue group often devolved into a ping-pong yelling match between two of the more vocal male participants, one Jewish and one Palestinian. It was not that the women in the group had nothing to say, but they were often out-shouted by these vociferous and very opinionated men. Plus, the activist groups were made up entirely of non-affiliated, disenfranchised and avowedly secular people, who often made disparaging remarks about religiosity. Events and meetings were held just when I was expected to be having Friday night dinner with my family. The odd occasion when they joined a Quaker group to hold an “Abrahamic Peace Seder” during Passover, the meal was made up of foods that I, who was observing traditional Passover restrictions, was unable to eat. I was also increasingly struck by the fact that the only thing that held many of these people together across difference was conflict. Since even among people open to conversation, the dialogue seemed to degenerate into a screaming match; it seemed that no one was really getting anywhere. The dynamics were flawed from the start: the Jews were seeking expiation, forgiveness, and understanding, while the

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75 Haifa is a major centre in Northern Israel with working-class roots and a sizeable Israeli Arab population. It is often touted as a positive example of Jewish-Palestinian co-existence, although tensions between the two ethnic groups do arise occasionally. See Elizabeth Faier, Organizations, Gender, and the Culture of Palestinian Activism in Haifa, Israel (New York: Routledge, 2005).

76 And this was in 1998, even before the Second Palestinian Intifada which began in 2000, or the attacks on the World Trade Centre on September 11th, 2001. Today, such a project would be even more difficult, I presume, with the addition of more checkpoints and the stalemate of negotiations between the Israeli government and Palestinian Authority.
Palestinians, who were tired of hearing about Jewish guilt and the Holocaust, were more interested in finding political allies to help put pressure on local and international governments and lobby groups to change the facts on the ground in Palestine. That was when I decided to resurrect my idea about Jewish and Muslim women meeting over religious text.

The Beginnings of ‘When Beruriah Met ‘A’isha’

It was 2003, and in the post-9/11 universe, the conversations in the mainstream media were about hijab and how Islam was oppressive to women. Amina Wadud had led her first prayer in South Africa, but it had not yet set off the firestorm of controversy within Muslim communities that her 2005 attempts in New York would. Amina Wadud’s and Asma Barlas’ books were circulating quietly among engaged Muslim women. But there was little public and nuanced discourse about Muslim women’s full participation and inclusion in ritual and communal life. Within the Jewish community, the Israeli-Palestinian conflict dominated the agenda, along with the ‘new’ anti-semitism emerging out of the Middle East. Discussions of women’s role and status in Judaism were not at the fore. While there were now a handful of female rabbis in Toronto serving Reform and Reconstructionist synagogues or directing Jewish educational institutions, a few mainstream Conservative synagogues had only recently begun letting adult women read from the Torah and have aliyot. And within Orthodox congregations, while questions of women’s ritual leadership were not on the table, there were even restrictions on the number of women who could serve on boards and by-laws barring them from becoming senior officers. So the gender issues in Judaism had certainly not been resolved, yet there seemed to be little public discussion of these issues. It was against this backdrop that I decided to convene a group of Jewish and Muslim women who would study religious texts together.

77 Beth Tzedec made this change to ‘Torah egalitarianism’ in 1994, while Beth David would follow suit in 2002. In 2012, Beth Tikva agreed to allow women to read from the Torah, but they are not eligible for the first or second aliyot. In fact, as of 2012, with the exception of two Conservative congregations in the city which have embraced full egalitarianism, most Conservative synagogues in the Greater Toronto Area still do not officially count women as part of the minyan and several have no formal policy at all regarding women’s inclusion in the service. See Shlomo Kapustin, “Conservative Shuls run the gamut from egalitarian to traditional in GTA” in The Jewish Tribune (12 March 2012) http://www.jewishtribune.ca/features/2012/03/20/conservative-shuls-run-gamut-from-egalitarianism-to-traditional-in-gta (accessed 2 August 2012).

Through my personal networks I spread word about the project, and on the day of the first meeting, twenty women – ten Jewish and ten Muslim – showed up to my home. Although subsequent meetings would never have such a large turnout, this convinced me that there was great need for such an initiative in Toronto.

**Activist/Academic Field Site**

Although the group began as an activist project intending to use religious texts as a springboard for meaningful dialogue among women of different faith and political backgrounds, as I contemplated beginning a PhD, I determined that the group could provide the grounding for a broader examination of Jewish and Muslim women’s similarly complicated relationship with religious texts more generally. Part of my intention was to assess if the interfaith encounter might highlight new strategies for navigating difficult texts from a gender and socio-legal perspective. As we shall see, it became apparent that the women were already using similar strategies for understanding their texts and the interfaith encounter brought into sharper focus their relationship with religious law, authority, and how they viewed their own religious tradition overall. It would also become apparent that the interpretive acts of laywomen were very much in conversation with the textual innovations of female scholars as well as broader interpretive and practical trends at work in North America’s communities of Muslims and Jews.

**Structure of the Dissertation**

Accordingly, these textual intersections and interactions between Jewish and Muslim women occur in a variety of discursive fields throughout the dissertation. To return now to the structure of the work, Chapter 1 explores the significance of the North American backdrop against which the majority of women’s interpretive activity is taking place. Indeed, the relative freedom that women have to re-examine classical texts and make alterations to the ways in which Judaism and Islam are practised may derive from the fact that in North America, there is no state enforcement of Jewish or Islamic religious-legal traditions and religious authorities do not wield the same power that they may have had historically. As a result, it is up to individual practitioners to determine to what extent religious precepts and doctrines will be binding in their personal lives. Still, this perceived ‘free-for-all’ does not translate into complete abandonment of traditional
praxis on the part of Jewish and Muslim women. This ongoing commitment to religious laws is all the more remarkable given that the results offered to women under secular laws generally surpass those granted to them under Jewish and Islamic law, especially when it comes to personal status issues such as marriage and divorce. But in a North American context, women’s relationships with religious laws are re-calibrated; rather than accepting halakha and fiqh as sources of disempowerment, North American women often capitalize on their knowledge of both legal systems to push for greater entitlements. Chapter 1 explores the nature of religious authority in North American Jewish and Muslim communities, the degree to which religious practice is indeed volitional, as well as the entanglements that Jewish and Muslim women have with both secular and religious laws as they push for more equitable results in their marriage settlements and in their overall status in their communities.

Chapters 2, 3 and 4 involve a comparative textual analysis and explore whether the hermeneutical approaches of contemporary Jewish feminist academics share anything in common with the tactics of Muslim women text-scholars. In these chapters, I note in particular the relationship that these scholars have with the law, whether they disavow themselves of religio-legal frameworks, regarding them as rife with patriarchal bias, or intentionally approach them head on in an effort to rehabilitate the law for feminist or egalitarian purposes. Chapter 2 looks at the work of Torah scholars Tikva Frymer-Kensky and Ilana Pardes and compares their strategies of textual interpretation to those employed by Qur’an exegetes Amina Wadud and Asma Barlas. Although they are starting from very different epistemological assumptions about the nature of scriptures and feminist theory, as we shall see, there is nonetheless much surprising overlap between the way that Jewish and Muslim women scholars approach notions of patriarchy, law, and later interpretive sources. While each of these scholars exhibits varying degrees of ambivalence about law in the foundational texts of Judaism and Islam, none of them can abandon it completely, much like the laywomen whom we will meet in Chapter 5.

Chapters 3 and 4 explore conceptions of religious law in the scholarship of academics working with more explicitly legal texts: the Talmud, and Hadith collections, as well as halakhic and fiqh literature. As we shall see, like their Biblical and Qur’anic Studies colleagues, female scholars working with Rabbinics and Hadith are also in conversation with traditional interpretive methods as well as modern academic trends in the study of these classical texts. In Chapter 3, Judith
Hauptman’s positivist reading of the law in Mishnaic and Talmudic sources is compared to the more Foucauldian and literary reading of rabbinic legal texts in the work of Miriam Peskowitz; at the same time, Fatima Mernissi’s deconstruction of legal hadith using the classical tools of *isnad* analysis are compared to Sa’diyya Shaikh’s more literary analysis of the way gender is constructed and depicted in Bukhārī’s “Book of Knowledge”. Although all these scholars can be seen as ‘rocking the boat’ in their pioneering analyses of legally oriented texts, the death fatwā issued against Mernissi for her ground-breaking critique of the Hadith is particularly noteworthy, especially given her own self-deprecating remarks about female intellectuals failing to shake up patriarchal religious systems.

But their popular and critical reception aside, each scholar represents a particular feminist approach to interpreting these texts, and they differ in their understanding of what earlier conceptions of the law may have to offer to contemporary Jewish and Muslim women. As we shall see, Hauptman and Mernissi see the hermeneutical moves made in the rabbinic tradition and later Islamic jurisprudence as a way of opening up Jewish and Islamic legal texts so that they can yield more favourable results for present-day women. Notably though, it is not so much particular rabbinic/juristic strategies that these women are invoking, but rather the very existence of debates on particular issues as an indicator of flexibility, of possibility, and as a productive space for rethinking women’s options within the religious legal framework. Peskowitz and Shaikh who favour more literary approaches to reading these texts are more ambivalent about the relevance of this legal legacy. Peskowitz is skeptical about the ability to remove these legal strategies from the structural inequities that undergird them, while Shaikh has an almost-phobic relationship with law, nearly erasing all traces of it in her analysis of Hadith. When Shaikh does make oblique references to law, however, it is to suggest that the empowered interpretation of marginalized women, or “embodied tafsīr”, as she calls it, should trump other conceptions of legal texts. As we shall see, the need to give empowered lay-interpretation its due will resonate as we explore notions of law and praxis among text-study participants in Chapter 5.

Chapter 4 explores the work of Kecia Ali and Rachel Adler, who not only more directly interrogate classical fiqh and halakhic discourses in their work, but who also question contemporary authority structures and provide concrete suggestions for renewing Islamic and Jewish praxis in present-day North America. Significantly, both scholars tackle marriage and
divorce laws, which, as noted in Chapter 1, are the areas a) most intimately connected to women’s religious identities and b) where women are most likely to feel the intersection of secular and religious authorities. Although the preceding chapters already note several common strategies and points of overlap in the work of the Jewish and Muslim women exegetes, in their similar scrutiny of marriage laws and calls for updating Jewish and Islamic legal systems to better reflect current, more egalitarian views of male-female partnerships, the approaches of Ali and Adler are perhaps the most synergistic among the women scholars of this study.

Chapter 5 makes the transition from academics back to laywomen by examining whether or not the hermeneutical approaches of Jewish and Muslim women scholars map onto the text-wrestlings of laypeople. Through the use of ethnography, I examine the nature of grassroots textual interactions between Jewish and Muslim women who participated in When Beruriah Met ‘Aʾisha sessions, and hence regularly studied Jewish and Islamic scriptures together between 2003 and 2009.79 This chapter explores participants’ relationships with law, praxis, and religious authority; their positionality vis-a-vis religious texts as both readers and interpreters; their knowledge of the interpretive works of female scholars; as well as their conceptions of one another as mediated through the inter-faith and intra-faith encounter. As already noted, there was much overlap in terms of women’s strategies for navigating their way around texts and practices which marginalize women, especially in the areas of diet, prayer and modesty. However, as this chapter illustrates, those most likely to re-interpret texts without recourse to external authorities and adapt practices to fit with their own conception of ethics were those who had ‘textual confidence’ and had spent years studying and familiarizing themselves with foundational religious texts.

Since all of these textual interactions take place in Toronto, in some sense the city itself becomes a subject of this chapter too. As one of the most multicultural cities in the world with thriving Jewish and Muslim communities, Toronto proves to be both a fitting and fruitful setting for

79 Some of these women were part of a community-based group of mostly young professionals which had been meeting periodically in women’s homes throughout the Greater Toronto Area beginning in 2003 (referred to henceforth as the ‘Community-based Group’), while the others had attended bi-monthly sessions operated out of the University of Toronto Multi-faith Centre between February and December of 2009 (known as ‘The Multi-faith Centre Groups’, divided further into ‘Group A’ and ‘Group B’). For more on the make-up of the various groups and the demographics of the participants, see “Ethnographic Appendix”.
exploring these Jewish-Muslim textual interactions. Participants often compared its diverse landscape of Jewish and Muslim communal institutions and sub-communities to those in other urban settings. In some cases Toronto was described as a shining beacon of pluralism, with some participants noting that this type of dialogue could not happen just anywhere in the world, while at other times, particularly among the Jewish participants, Toronto seemed dour and restrictive against the vast array of Jewish congregations, schools, and educational programs available in other major Jewish centres like New York or Jerusalem. Either way, as this chapter illustrates, geography and the existence or lack of community supports (i.e., sympathetic organizations, networks and leaders) also had a tremendous impact on the way Jewish and Muslim women related to religious texts and practices and had a direct role in the formation, suppression or flourishing of textual confidence.

The conclusion offers some final thoughts on the inadequacy of existing academic theories of ritual, noting how the relationship between law and text continues to be neglected, even in the groundbreaking work of theorists such as Saba Mahmood, whose work also explores women’s experiences of religious praxis, but among Muslim women involved in the piety movement in the context of contemporary Egypt. Although her research makes thought-provoking claims about ritual as a training of the body, as we shall see, she misses the important role of scripture in this equation. The concluding chapter also reflects on the importance of the secular university as a space for women to pursue more in-depth study of traditional texts, experiment with a variety of interpretive techniques, and build upon the knowledge base offered at a range of faith-based educational venues. Indeed, there would be no Rachel Adler or Kecia Ali daring to propose significant changes to religious marriage laws for Jews and Muslims living in North America, nor would there be an Amina Wadud or Judith Hauptman tackling gender-sensitive readings of classical texts for the first time if it had not been for secular universities providing them with an institutional home from which to conduct their work. And given that 80% of the women I interviewed had taken courses on Jewish and Islamic texts, languages, history and philosophy in university, we see the critical role that non-religious institutions can have in informing women’s conceptions of religious law, authority and praxis in the twenty-first century. As the pages that

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follow will illustrate, the proposals and interpretations of women exegetes can only have an impact on community praxis if there are informed laywomen (and men) to read and debate them. Only with an engaged and knowledgeable readership, does a Jewish or Muslim woman intellectual have an opportunity to ‘upset the system’ and open up a dialogue about ways to obtain more equitable religious-legal outcomes for the women in their communities.
Chapter 1
Knowing Our Rites: Jewish and Muslim Women’s Entanglement with Secular and Religious Law

In contemporary North America, due in part to the advances made by civil rights movements of the 1960’s and 70’s, Jewish and Muslim women living in constitutional, democratic secular states may, at least in theory, enter political life, choose any profession, including that of jurist or judge, provide testimony in a court of law, inherit property on par with the men in their lives, choose to form marital relationships based on principles of egalitarianism, and seek to end that relationship, without punitive consequences, should things go awry.\(^1\) Under the laws of the state, provided that they are citizens, there is nothing barring them from civic life and they are given exactly the same rights as any other citizen. Imagine then, the disconnect for these women, especially those raised in this secular-liberal environment, to find that classical expressions of their own religious traditions either prohibit or severely limit their rights in the areas cited above (public leadership, inheritance, witnessing, marriage and divorce) as well as in the role they can play in liturgical and ritual matters (leading prayer, studying and/or interpreting religious texts).\(^2\)

As we shall see, these rights ‘deficits’ presented by their religious traditions galvanize Jewish and Muslim women to invoke secular state laws in the public sphere as a means of ensuring their entitlements and protecting their personal status interests in their own communities.

\(^1\) The existence of these rights in theory does not always make them accessible in practice. Despite lobbying efforts of women’s and labour groups, a significant wage gap still exists between men and women in North America and women are still noticeably absent in higher paid fields such as the skilled trades. Gender as well as racial discrimination compounded by the exigencies of political life, still make women, and especially visible minority women, highly under-represented in Canadian and American parliamentary systems. Lastly, economic and social power imbalances between spouses often collude to make the outcomes of family law settlements less than equitable. See Statistics Canada, Women in Canada: A Gender-based Statistical Report, 2005 (http://www.statcan.gc.ca/pub/89-503-x/89-503-x2005001-eng.pdf, accessed July 22, 2009).

\(^2\) The categories of public/private and ritual/liturgical are somewhat problematic when it comes to characterizing aspects of Jewish and Islamic law. The breadth and scope of both systems of law are far greater than those covered by secular law. While Islamic fiqh is often divided into matters of ‘ibada (worship) and mu’amalat (social relations), to some extent all jurisprudence is considered to be ‘ibada, in that one is obliged to follow it. Similarly, Jewish law is divided into mitzvot or commandments between humans and the divine (bein adam la-makom) and those that govern social relations (bein adam l’haver), but the divisions are not always clear (eg. Is “honouring one’s parents” an obligation to one’s fellow human beings or to God?).
Jewish Women’s Appeals to Secular Law: Equality Laws & Divorce Law

For Jewish women, who were at the forefront of the women’s rights movements in the United States, the dissonance between changes they were seeing in American social policy and the static nature of synagogue and Jewish institutional life was profound. Realizing that they could not limit their feminist critique to existing American socio-economic issues, a fledgling movement of Jewish feminists established in the early 1970s sought to achieve, “the full, direct and equal participation of women at all levels of Jewish life – communal, educational and political.”

Endeavours such as theirs eventually resulted in the ordination of women rabbis in three out of the four major denominations, and would radically change the face of modern liberal Judaism. In most subsets of Orthodoxy, though, women still confront many of the same halakhic obstacles regarding leadership and participation as they did more than thirty years ago.

But in addition to trying to change the face and authority structures of the synagogue, in recent decades, Jewish women also appealed to secular laws to help them tackle one of the more troubling areas of halakha: a Jewish man’s unilateral right to divorce. Although Ashkenazi rabbinic reforms around the year 1000 CE banned polygyny and simultaneously made it a


4 That is not to say that there has not been some progress even within modern Orthodoxy. Orthodox Jewish women now study Talmud and Halakhic codes and commentaries at extremely high levels in women’s yeshivot such as the Drisha Institute in New York City. Women have similarly responded to exclusion in traditional prayer services by starting their own tefilla groups. For the resistance that these groups have received from the Orthdox establishment see Tamar Ross, Expanding the Palace of Torah (Labanon, NH: Brandeis University Press, 2004) 72-99. In a similar vein, some Orthodox women have sought, and received private ordination from their teachers, although these ordinations are not generally recognized by mainstream Orthodoxy. In May of 2009, a woman named Sara Hurwitz received ordination as a Maharat, or “leader in legal, spiritual and Torah matters” from Rabbi Avi Weiss of the Hebrew Institute of Riverdale in New York. See (http://www.jofa.org/pdf/JOFA%20Press%20Release.pdf accessed July 10, 2009) Although the move has been applauded by many Orthodox feminists, the question remains that if these women are undergoing the same rigorous study as men, and passing the same exams as men who are becoming rabbis, why the insistence on referring to these female scholars by a different title?

5 Polygyny was deemed permissible in both the Torah and the Talmud. While one source suggests that the upper limit in terms of the number of wives one could have is eighteen, according to b.Yebam. 44a, four wives was thought to be more realistic in order for a man to properly fulfill all his economic and sexual obligations to her. In reality though, polygyny may not have been widely practised among Jews of Ashkenazi descent. Nonetheless, it continued to be regarded as permissible among Sephardic Jews until the modern period, especially since the vast majority of Sephardic Jews had been living for centuries under Muslim rule which sanctioned polygyny. In Israel, where over half the population is of Sephardic origin, polygyny was outlawed by the state in 1950, although those Sephardic Jews who had arrived to the country with multiple wives were permitted to maintain their marriages. See Rachel
requirement for a man to seek his wife’s consent if he wanted a divorce,\(^6\) the husband remained the only party to the marriage capable of ending the relationship by granting a *get*, a halakhic divorce document. Although in the pre-modern period, there were some – albeit limited – instruments available to rabbis to help ‘convince’ a recalcitrant husband to willingly divorce his wife,\(^7\) since the weakening of rabbinical powers in modernity (see below), these have not been viable options. Since the ban on polygyny for men could technically be waived,\(^8\) and since the halakhic definition of adultery only pertains to a man having relations with another man’s wife, a Jewish man could remarry an unattached woman without divorcing his wife. However, the same rules do not apply to Jewish women; a Jewish woman is unable to remarry within the Jewish community unless she receives a *get* from her husband. If she has relations with another man, the union is considered adulterous and any offspring they might have would be considered illegitimate, known as a *mamzer*, in Hebrew. Since the mamzer is socially ostracized, and according to traditional halakha, is unable to marry another Jew, the fear of delegitimizing their unions and bringing this label upon their families leaves many women effectively ‘chained’ to

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\(^6\) This ban was attributed to the Franco-German Rabbi Gershom ben Judah, often referred to as “Rabbeinu Gershom Me-or Ha-Golah” (Our rabbi Gershom, the light of the exile). Although the ketubah, a pre-nuptial agreement of sorts, outlining marital obligations and describing a woman’s financial compensation in the event of death or divorce, was introduced by the rabbis of the Talmudic period as a means of ensuring that a divorced woman would not be left destitute, a woman could still be given the ketubah against her will and there was nothing to stop a man from simply taking an additional wife. Consequently, Gershom’s ban went further in trying to provide economic security to women – it not only prohibited polygyny, but required both husband and wife to consent in order for a divorce to be valid. Once it became necessary for a wife to provide her consent in the event of divorce, and since a husband now also needed to be formally divorced if he wished to take another wife, a woman could use this as a bargaining chip in the negotiation of a divorce settlement. Hence, the cost of a divorce could go well beyond the standard minimum that was originally established in the ketubah. If these injunctions were violated, a man would face ex-communication, or being cut off entirely from the Jewish community. Given the precarious status of the Jews in Ashkenaz, ex-communication was a very serious threat indeed; losing your entire social and economic network, with no place to take refuge, could leave you as good as dead.

\(^7\) In the Middle Ages, rabbis had the power to socially ostracize or even threaten corporal punishment upon anyone suspected of violating Gershom’s ban as a way of reducing the instances of agunot. See, for example, Maimonides, *Mishne Torah, Laws of Divorce* 2:20. However, the husband still needed to be seen as having given the get out of his own free initiative. Hence, it has been noted that the rabbis often acted as though their hands were tied in these matters, with particularly devastating consequences in cases of domestic violence. See Naomi Graetz, *Silence is Deadly: Judaism Confronts Wifebeating* (Jerusalem: J. Aronson Publishing, 1998).

\(^8\) A later proviso allowed a man to override the ban on polygyny if he could get the consent of 100 rabbis in 3 different communities. This allowance was made given that the ban was merely a rabbinic law and that according to the Torah, a man still had a right to multiple wives. But, in reality, even without the express permission of the requisite 100 rabbis, a man could refuse to give his wife a get, skip town and remarry elsewhere.
men with whom they no longer have any relationship.9 These women are known as agunot or, literally, chained wives. Numerous measures have been proposed by various Jewish communities in recent times to help tackle this problem,10 but none have received widespread recognition or approval. Consequently, in 1990 a coalition of Canadian Jewish women’s groups

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9 This fear of mamzerut (the condition of being a ‘mamzer’) is so strong, that even in more liberal movements of Judaism, precautions are taken to ensure that marriages will be recognized as legitimate by Orthodox authorities. In Reform and Reconstructionist Judaism, although civil marriages are considered sufficient, most adherents will still insist upon being married in a religious ceremony. Both men or women may be accepted as witnesses in these ceremonies, and a ketubah, if included, may be regarded as more of a cultural practice rather than a legal one. Nevertheless, Reform leaders will often encourage couples to seek a get, or religiously-recognized divorce, as well as a civil divorce to ensure that any children resulting from future unions are not labelled as ‘mamzer’.

10 Due to the ban of Rabbi Gershom, the traditional ketubah has largely taken on a more symbolic role, characterizing the sanctity of Jewish marriage and attesting to the good intentions of the husband. Even within most Orthodox communities, it is regarded as a ceremonial document rather a legally-binding financial arrangement. See Jonathan Reiss and Michael Broyde, “Prenuptial Agreements in Talmudic, Medieval, and Modern Jewish Thought” in Marriage, Sex and Family in Judaism, eds. Michael Broyde and Michael Ausubel, (Oxford: Rowman & Littlefield Publishers, 2005), 195, 200-201.

Nevertheless, one of the most practical uses of the modern-day ketubah is the inclusion of certain clauses to prevent the incidence of agunot. Going back to ancient times, certain clauses and conditions could be negotiated at the time of writing the ketubah to make amendments to standard provisions. Today too, the Conservative movement has made standard what is known as “the Lieberman clause”, which states that if one of the parties to the marriage terminates the union in a civil court, then either can summon the other to appear before the Bet Din, or rabbinical tribunal, and they agree to abide by the decision of that court so that both can live in accordance with Torah. Similarly, the Rabbinical Congress of America (RCA), the main body representing Orthodox rabbis in North America has devised a pre-nuptial agreement as an addendum to the ketubah, which has both parties agreeing to appear before the Bet Din of America for binding arbitration if they cease to live together as husband and wife. The document also contains optional clauses pertaining to the division of assets and child custody, which the couple may agree to have decided by the Bet Din as well. But the gist of the agreement insists that the husband- to-be will continue to support his wife financially until such time that a get is provided. Both the Lieberman clause and the RCA pre-nuptial agreement have their critics. The former was ultimately rejected by Orthodoxy as halakhically invalid given that a) it would put a Conservative Beit Din in charge of the process and b) the resultant get would be coerced from the husband rather than given volitionally. See Norman Lamm, “Recent Additions to the Ketubah: A Halachic Critique,” Tradition 2 (1959), 93-119. Also, in practice, there has been difficulty in having the Lieberman clause enforced by a civil court, even as a private contract. See Biale, Women in Jewish Law, 110. The RCA agreement has been similarly accused of resulting in a forced get, and of being unenforceable as an arbitration agreement at the state level, but feminists have further concerns about the subtle push to have asset division handled by the rabbinic court rather than a civil one, which generally guarantees more equitable settlements. See See Susan Metzger Weiss, Sign at Your Own Risk: The "RCA" Prenuptial May Prejudice the Fairness of Your Future Divorce Settlement, Cardozo Women's Law Journal 6 (1999): 49-101.
took matters into their own hands and successfully lobbied the Canadian government for amendments to the federal Divorce Act in 1990. The amendment gives the court the discretion to reject any application, affidavit or pleadings filed by a spouse who has not removed all barriers to their former partner’s religious remarriage. Although the constitutionality of a similar law drafted in the U.S. (the so-called “First New York Get Law”, aka: Section 253 of the Domestic Relations Law) has been challenged, it has been suggested that the Canadian legislative amendments have helped to resolve an estimated 75% of get-withholding and get-extortion cases. So in instances where rabbinic authorities have been unwilling or unable to ameliorate Jewish practices that disadvantage women, Jewish women empowered themselves by asking state authorities to intercede on their behalf.

11 Similar provisions have also been enacted in other jurisdictions across the country. See for example, Ontario’s Family Law Act, R.S.O. 1990, c.F.3, s. 56(5).


13 On the way the Canadian Beit Din works with husbands to resolve aguna cases, see Lisa Fishbayn, “Gender, Multiculturalism and Dialogue: The Case of Jewish Divorce,” The Canadian Journal of Law and Jurisprudence, 21(2008): 91. The Beit Din understands the amendment not as a blunt legal instrument, but rather as a means for opening a dialogue with a recalcitrant husband. John Syrtash, a well-known advocate of the 1990 amendment to the Divorce Act, does not explain how this figure of 75% has been derived, but perhaps the fact that there are not more cases of recalcitrant Jewish spouses (see note 14 below) clogging the Canadian court system indicates that the amendments are working. Instances of recalcitrant husbands extorting exorbitant sums of cash from their wives in exchange for a get, or women hiring violent thugs to beat a get out of a deadbeat spouse are not unheard of in recent decades. See Lisa Zornberg, “Beyond the Constitution: Is the New York Get Legislation Good Law?” Pace Law Review 15 (1995):705.

14 Significantly, in a recent court case, the Quebec Court of Appeal explicitly stated that its role was not “to palliate the discriminatory effect of the absence of a get on a Jewish woman who wants to obtain one …” See Marcovitz v. Bruker, [2005] Q.J. No. 13563, 259 D.L.R. (4th) 55, at para. 76 (Que. C.A.). These remarks were made in the context of the ultimate Canadian get test-case, Bruker v. Marcovitz, where these hard-fought legislative protections and amendments seem to have been mostly ignored by judges in the lower courts. Stephanie Bruker was denied a get by her husband for fifteen years, despite the couple signing a Consent to Corollary Relief Agreement which included a clause that the couple agreed to appear before rabbinical authorities to obtain a get upon the granting of a divorce. Bruker argued that her husband’s refusal to appear before the rabbis upon the granting of the civil divorce constituted a breach of contract and she sought compensation for the losses she suffered as a result of her inability to date, marry, or have children within her faith. Marcovitz, on the other hand, argued that their agreement regarding the get was not valid under Quebec law and that his right to freedom of religion was being violated by the original clause. Both the Quebec Superior Court and Quebec Court of Appeal were reluctant to engage the religious issues at the core of the dispute and it was only once the case reached the Supreme Court of Canada that Justice Rosalie Abella alluded to the fact that agreements to discourage religious barriers to remarriage are enforceable in civil courts and that such measures were undertaken as a public policy measure to address gender discrimination. Clearly then, these amendments are only helpful if a) the recalcitrant husband seeks a formal divorce in a civil court and b) the legal community accepts their validity. Indeed, the dissenting opinion in Bruker v. Marcovitz reflects the fact that Canadian legal authorities are quite divided on when it is appropriate for the state to weigh in on the matters of
Muslim Women’s Appeal to Secular Law: Family Law Provisions

In North American Muslim communities, there have been similar concerns about the ways in which Islamic law does not reflect contemporary Western conceptions of gender equality. These anxieties on the part of some Canadian Muslim women were best expressed in what became known as ‘the Shari’a debate’ in Ontario, Canada, when the possibility arose of having family law matters arbitrated according to religious legal principles. The debate centred around Ontario’s 1991 Arbitration Act, which was originally set up for managing disputes arising from business dealings and was seen as an efficient and cost-effective way to avoid formal litigation for solving civil disputes. However, because the original Act did not limit arbitration to issues of commerce, nor did it specify what type of law needed to be used by the arbitrator, some religious communities, particularly some members of the local Jewish and Muslim communities, found this to be a very attractive means for having the otherwise non-binding decisions of their religious tribunals enforced under Ontario law. Although the overwhelming majority of Jews and Muslims across Canada tended to appeal to the secular court system to resolve their family law and personal status issues, according to traditional Jewish and Islamic legal systems, it is

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15 There is no room here for a full discussion of this debate. Although the consultation process was portrayed by the government as investigating the use of all forms of religious law in arbitrating family law matters, the debate was precipitated by the inflammatory remarks of a Muslim lawyer who announced his intentions to set up a “Shari’a Court” for adjudicating family law matters. Hence, the public firestorm that ensued often focused on the incompatibility of “shari’a” with Ontario and Canadian law. However, the issues that arose were just as relevant for Jewish women, as the Beis Din, or rabbinic court, in Toronto was similarly able to arbitrate family law matters under the existing legislation. For a full account, please see Ontario Ministry of the Attorney General and Marion Boyd, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*. (Toronto, ON: Queen’s Printer, 2004). (http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/ (accessed July 19, 2009).

16 Several agencies representing the interests of Christian groups were also involved in the Ontario-wide consultation process investigating this issue, but there was little to suggest that the existing 1991 Arbitration Act was having a negative or differential impact on these populations. Those who met with Marion Boyd, the author of the report, included representatives from the Catholic Immigrant Centre, Evangelical Fellowship of Canada, and the Christian Legal Fellowship, the latter which made an official submission to Ms. Boyd. See Ontario Ministry of the Attorney General and Marion Boyd, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*. (Toronto, ON: Queen’s Printer, 2004). (http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/ (accessed July 19, 2009).
preferred that these disputes be handled as much as possible within the community by experienced adjudicators.\(^\text{17}\) However, since traditional religious legal rulings do not necessarily offer women the same rights that they might have been entitled to in the secular courts, several women’s groups and civil rights groups feared that women would be coerced into private religious settlements without even knowing what their options were. At the time, the Canadian Council of Muslim Women (CCMW), a national not-for-profit organization representing the interests of Muslim women across Canada, issued several press releases expressing their opposition to the proposed use of Islamic law to settle family status issues.\(^\text{18}\) Alia Hogben, the organization’s executive director, explained the unenviable position in which Canadian Muslim women were suddenly finding themselves,

As citizens of Canada, we believe that the laws of the land must protect us, treat us equally and be applied to all of us, irrespective of our ethnicity, race, gender or religion. We know that any benefits for women in Muslim family law also exist in Canadian family law, plus greater protection of other rights. For example, the ability to have a pre-nuptial agreement, no polygamy, laws against violence, and fairer child custody than in Muslim law… Unquestionably, 1,400 years ago Muslim women were given significant rights. However, it is misleading to think that these rights are adequate and that we should not have enhanced human rights under the Universal Declaration and the Canadian Charter of Rights and Freedoms, which we believe are congruent with the principles of Islam.\(^\text{19}\)

Making a clear distinction between shari’a or God’s law, and fiqh, which is the intellectual effort of jurists to interpret the law as expressed in the Qur’an and Sunna of the Prophet, Hogben illustrated the struggle to be a believing Muslim committed to shari’a and yet equally committed to the principles of equality in family law enshrined in the Canadian legal system.

While a vociferous constituency of Canadian Muslim women rejected the option of resolving contemporary family disputes according to what they regarded as outdated fiqh regulations removed from their original geographical and social-historical contexts, some Muslim women in North America have conversely tried to employ the secular court system to enforce the payment

\(^\text{17}\) This is generally understood as being when the law of the land permits such practices.

\(^\text{18}\) Clearly, Muslim women across Canada are a diverse group, and the CCMW is not the voice of all of them. For the perspectives of other Muslim women who participated in the Ontario government’s consultation process, please see Marion Boyd, *Dispute Resolution in Family Law*, section 6.

\(^\text{19}\) See CCMW website Toronto Star article, June 1, 2004 “The laws of the land must protect all of us, irrespective of gender or religion” (http://www.ccmw.com/activities/act_no_religious_arb.html accessed July 19, 2009).
of the *mahr*, the dower Muslim women are entitled to upon marriage. While under pre-modern fiqh, the mahr was an essential element for validating the marriage itself\(^{20}\) (it gave the husband licit access to sexual relations with his wife), it was considered a means of support for a divorced woman after her divorce became final.\(^{21}\) Dating back to the pre-modern period, the mahr typically consisted of two parts, the *muqaddam*, which was paid in advance and the *mu’akhkher*, which was paid at the time of the dissolution of the marriage. But as court records from Ottoman-controlled Egypt illustrate, the deferred mahr was not always so easy to obtain,

> Divorced wives often sued for alimony and divorce compensation [nafaqa and the amount of mahr due to her]. When a woman proved her case, the court always found for her, and the husband was required to pay. The question of proof, however, was often a complicated matter, particularly when the husband declared the divorce privately or if it was not recorded in court...\(^{22}\)

Abdal-Rehim similarly notes that “more experienced wives” would ensure that a hefty portion of the mahr be paid upfront to avoid some of the manipulations of the figure that often came with khul’a or wife-initiated divorce, in which she was expected to repay and/or forgo the deferred mahr and other support payments.\(^{23}\) It stands to reason that if mahr entitlements were difficult to enforce even under Muslim administrations in the pre-modern period when Islamic law was a defining feature of the legal system, then in North American courts where the whole concept of mahr is poorly understood, the results would be even less satisfactory for women. Still, this has not stopped women from trying.


\(^{21}\) A divorce is final under fiqh rules after the wife completes a waiting period called, ‘*iddah*, during which a husband was required to pay out maintenance, or *nafaqa*, to his wife. Generally speaking, the ‘iddah period lasted 3 months, during which a woman was not allowed to marry another man. However, if the woman was pregnant, nafaqa payments would last until the birth of the child.


\(^{23}\) Abdal-Rehim, “The Family and Gender Laws in Egypt”, 103, 105. Abdal-Rehim’s work also notes that in the case of khul’, women were often made to compensate their husbands for amounts well over and above the mahr which they had originally agreed upon in order to ‘buy’ her freedom. Hence, we see parallels between the mahr and the get as similarly positioned tools of extortion used by recalcitrant Muslim and Jewish husbands.
Indeed, North American courts have treated the mahr inconsistently. In some cases, such as *Nathoo v Nathoo*, the British Columbian court understood mahr as part of a “marriage agreement” under section 48 of the Family Relations Act and awarded a deferred mahr of $20,000 to the wife over and above the division of family assets.\(^{24}\) By contrast, in *Kaddoura v Hammoud*, an Ontario court did not recognize the deferred mahr as part of a marriage contract pursuant to subsection 52(1) of Ontario’s Family Law Act, considering it to be “fundamentally an Islamic religious matter” and consequently not enforceable under civil law.\(^{25}\)

## Knowing their Rites/ Rights

Nonetheless, the history of Jewish and Muslim women in North America thus indicates that they are certainly not shy about invoking their – in the long view of history – ‘newly’-acquired rights as citizens to challenge the privileges denied to them as members of faith communities. In the examples cited above, Jewish women used secular equality laws to frame their desire for increased access to community leadership roles, and secular divorce laws to address the unequal nature of the get. In a similar fashion, while some Muslim women used their rights under secular family law to protect them from less egalitarian results offered to them by Islamic law, others actually turned to secular laws to help enforce Islamic entitlements such as mahr after the breakdown of their marriages, since there is no other informal means available for enforcement of mahr payments in the community. Such challenges were only possible because these women were well-educated, knowledgeable of their entitlements in both traditional sources and secular legal regimes.\(^{26}\) In many ways then, it seems that a certain consciousness of their entitlements

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\(^{25}\) See *Kaddoura v. Hammoud*, [1998] CanLII 14937 (ON SC), paragraph 26. The trial judge felt that understanding the rights and obligations of mahr would lead the court into a “‘religious thicket’, a place that the courts cannot safely and should not go.” [paragraph 30]. See also Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation* (Burlington, VT: Ashgate Publishing Company, 2010), 77.

\(^{26}\) Interestingly enough, this legal savvy among women determined to expand their personal status rights was also noted by Anne Lorene Chambers in her book on early marriage law reform in Victorian-era Ontario. In her analysis of court records from the period, she found that “women attempted to use the legal system, despite its flaws, to their individual advantage...[the women] courageously asserted their right to decent treatment and sought punishment for irresponsible and violent husbands, making the court a forum for the articulation of new standards of manliness. Some of them astutely manipulated the statutes...defying standards of feminine behaviour...” See Anne Lorene Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: Osgoode Society for Canadian Legal History, 1997), 12.
according to both religious and secular legal systems – or to put it another way, an in-depth knowledge of their rites/rights – has shaped Jewish and Muslim women’s experience of religious praxis and religious law in North America.

As we shall see in Chapter 5, this was my finding among the women of my ethnographic study as well. It was those laywomen with ‘textual confidence’ – those who had grappled with textual material for years, beginning in their youth – who were the most likely to challenge the status quo and mainstream readings of texts and traditional practices. While the women in my study took it upon themselves to adapt and redefine daily practices involving food, prayer, and dress/modesty without recourse to any external authority, it is perhaps no surprise that the challenges and appeals to secular courts noted here revolve instead around personal status claims such as marriage, as marriage signifies an intersection of both state and religious authorities, a nexus of formal and informal powers in North America.

**Public/Private, Secular/Religious: Law as Part of the ‘Everyday’**

To be fair, the distinction I am making here between religious practices surrounding diet, dress and prayer that are of a more ‘private’ nature, part of the ‘everyday’, as compared to marriage which is more ‘public’ and institutional and hence can involve an appeal to the secular court system, is somewhat of an artificial binary. From the perspective of the Jewish and Islamic legal systems, all of these practices are equally public, communal obligations, and historically, questions or disputes pertaining to the fulfillment of any of these obligations would have been brought before a religious authority rather than grappling with them on one’s own. In other words, modern Western conceptions of ‘private’ are generally presumed to be areas that would be immune from legislation/regulation. However, in Jewish and Islamic legal contexts, these same ‘private’ acts pertaining to diet, dress and prayer are constitutive of communal affiliation as well as notions of obligation and are qualitatively no different from more ‘public’ responsibilities such as the payment of taxes or recording and pronouncement of a marriage; both are equally

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27 See Chapter 5.

28 On the notion of rabbinic law pervading the ordinary, the ‘everyday’, see Miriam Peskowitz’s analysis in Chapter 3.
subject to regulation and the law. Hence, contemporary, secular notions of public and private are not wholly transferable to traditional Jewish and Islamic legal systems.

On the other hand, while we recognize personal status issues such as marriage as being the purview of the secular state, so-called ‘private’ issues of diet, dress and prayer are not totally immune to the ‘long arm of the law’ in contemporary North America either. States are involved in the regulatory mechanisms involving food production, food labelling, and food inspection;\(^{29}\) prayer spaces are subject to zoning and incorporation laws;\(^{30}\) articles of clothing require inspection and labelling\(^{31}\) and there are even laws and regulations governing what clothing needs to be worn in which circumstances.\(^{32}\) Most recently, in Canada, the law has even weighed in on when Muslim women may be required to remove their face veils, known as niqab.\(^{33}\)

\(^{29}\) On laws and regulations pertaining to food labelling and inspection see for instance the Canadian Food and Drugs Act, the Canada Agricultural Products Act, and the Consumer Packaging and Labelling Act. The Canadian Food Inspection Agency website \(< http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/eng/1299846777345/1299847442232>\) (accessed 12 Feb 2013).

\(^{30}\) For an example of zoning by-laws that apply to places of worship in the city of Toronto, see “Draft Zoning By-Laws” \(<http://www.toronto.ca/zoning/bylaw/ZBL_NewProvision_Chapter150_50.htm>\) (accessed 12 Feb 2013); for the implications for religious organizations that choose to incorporate, see, \(<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Charities.pdf>\) (accessed 12 Feb 2013).


\(^{32}\) On requirements of employers to provide appropriate and protective clothing to their employees see Oil and Gas Occupational Safety and Health Regulations, SOR/87-612, \(<http://laws-lois.justice.gc.ca/eng/regulations/SOR-87-612/page-39.html#s-13.7>\) (accessed 13 Feb 2013); on the illegality of disguising oneself with a face mask with the intent to commit a crime, see Criminal Code of Canada, R.S.C., 1985, c. C-46” \(<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-168.html#s-351>\) (accessed 13 Feb 2013).

\(^{33}\) In the last few years, several legislative moves have been made in Canada to limit occasions in which Muslim women may wear the niqab. Quebec’s proposed Bill 94 which was introduced in 2010 sought to establish guidelines as to when it was considered ‘undue hardship’ for a government institution to respond to requests for religious accommodations. The bill stated that it is a general practice that people “show their face during delivery of services” and that if reasons of security, communication or identification warrant it, a religious accommodation could be denied. The word niqab or face veil appears nowhere in the bill, but the implications are clear. The bill was rejected by Quebec’s opposition party as not going far enough to set limits on accommodation requests. See Bill n°94 : An Act to establish guidelines governing accommodation requests within the Administration and certain institutions” \(<http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-94-39-1.html>\) (accessed 13 Feb 2013). Then, in December 2011, Canadian Minister of Citizenship and Immigration, Jason Kenney announced new rules that would require the removal of the niqab while a woman takes the oath of citizenship. Citing the niqab as a “cultural tradition” that is not a requirement of Islam, he suggested that the citizenship oath is a “public declaration that you are joining the Canadian family” and that the niqab “reflects a certain view about women that we don’t accept in Canada.” See “Face veils banned for citizenship oaths,” CBC website, 12 Dec 2011, \(<http://www.cbc.ca/news/politics/story/2011/12/12/pol-kenney-citizenship-rules.html>\) (accessed 13 Feb 2013). For the amended directives banning face veils at the time of taking the oath, see “Operational Bulletin 359 – December

So while we tend to think of Jewish and Islamic law as pertaining to the ‘everyday’, as legal theorists following Foucault have illustrated, even secular law manages to pervade these seemingly more ‘private’ aspects of one’s lives. As Sarat and Simon have noted, “most social relations are permeated with law. Long before we ever think about going into a courtroom, we encounter landlords and tenants, husbands and wives, barkeeps and hotel guests – roles that already embed a variety of juridical notions.”\footnote{Austin Sarat \& Jonathan Simon, “Beyond Legal Realism?: Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship” in \textit{Tale Journal of Law \\&Humanities} 3, 5 (2001): 20.} Paul Berman further illustrates how our “understanding of the world and what we take to be the ‘natural’ order of things” is actually constructed by law.\footnote{Idem. Quoting from Paul Berman, “The Cutural Life of Capital Punishment: Surveying the Benefits of a Cultural Analysis of Law” \textit{Columbia Law Review} 102, 4 (2002):1129-1177.} While these descriptions of “the law” pertain to state law, they need not be limited to secular configurations of law. Indeed, as Wickham and Hunt have observed, it is not just North American Jews and Muslims who live with multiple legalisms in their lives,

Law is not and never has been a unitary phenomenon, even though the assumption that it is, has played a central role in most legal discourse and theories of law...
complex of practices, discourses and institutions. Over this plurality of legal forms, ‘state law’ persistently, but never with complete success, seeks to impose a unity.\(^{37}\)

In that vein, marriage in North America presents an interesting case, as it renders transparent the fact that we live in a world of legal pluralism. While, as noted above, opening a kosher or halal butcher shop or a place of worship – each of which would implicate government in the processes of certification, incorporation and registration\(^{38}\) – may similarly reveal the intertwining of religious and secular laws, these are experiences that would only affect a small number of women. On the other hand, a majority of Jewish and Muslim women will likely choose to get married at some point, and here they will clearly encounter an intersection of both secular and religious legal authorities, especially if they wish to be married within their religious communities and have their union recognized by the state.

Marriage Law: An Intersection of Authorities

This strange entanglement of marriage with both secular and religious legal systems is not a new phenomenon. In fact, there is a long history of personal status laws being governed by religious authorities in both Europe and North America. Indeed, when it comes to laws governing marriage, in most jurisdictions, it is the state that is the proverbial new kid on the block.\(^{39}\) Until 1857, the ecclesiastical courts in England were responsible for both marriage and divorce; it was only once The English Matrimonial Causes Act was passed in 1857 that separate state courts


\(^{38}\) As Sue Fishkoff has noted in her best-selling book *Kosher Nation*, in the United States, “there is no national standard for what can and cannot be called kosher. About two dozen states have kosher laws, but they are based on consumer protection – as long as you are up front about what you are selling and whose kashrut laws you follow, you are permitted to call it kosher.” See *Kosher Nation: Why More and More of America’s Food Answers to a Higher Authority* (New York: Schocken Books, 2010). Similar laws against mislabelling food as kosher or halal are set out in the Canadian *Food and Drugs Act* and the *Consumer Packaging and Labelling Act*. See “Method of Production” on the website of The Canadian Food Inspection Agency <http://www.inspection.gc.ca/food/labelling/other-requirements/method-of-production/eng/1332436588220/1332436664583> (accessed 28 Nov 2012)

were established to handle cases of divorce.\footnote{See Anne Lorene Chambers, \textit{Married Women and Property Law in Victorian Ontario} (Toronto: Osgoode Society for Canadian Legal History, 1997), 17.} In the case of the United States, despite the formal separation of church and state, as Carol Weisbord explains,

it is widely understood in legal writing on the family that this link between Christianity and the law was particularly visible in the area of family law... The influence of religion on the state law of the family...is symbolized by the fact that ministers were from an early time permitted to perform marriage ceremonies, even though marriage was conceived in the seventeenth century as a civil institution having civil consequences.\footnote{Carol Weisbord, “Family, Church and State: An Essay on Constitutionalism and Religious Authority,” \textit{Journal of Family Law} 26 (1987-1988): 752-753.}

Similarly, although civil unions were available in Canada from the end of the French period, and Parliament was granted “exclusive legislative jurisdiction over ‘marriage and divorce’” in reality, most marriages continued to be solemnized by clergy well after Confederation.\footnote{While initially the rights of solemnization were exclusively held by Protestant and Catholic ministers, in 1857, this right was extended to “ordained ministers of every religious denomination in Upper Canada”, including rabbis. See Katherine Arnup, \textit{Close Personal Relationships between Adults: 100 Years of Marriage in Canada} (Ottawa: Law Commission of Canada, 2001), 6-9; also Peter Ward, “History of Marriage and Divorce” in \textit{The Canadian Encyclopedia} \url{http://www.thecanadianencyclopedia.com/articles/marriage-and-divorce} (accessed 15 Oct 2012).} Furthermore, this view of marriage as the primary responsibility of religious authorities does persist in Canada. According to Statistics Canada data from the beginning of the twenty-first century, the overwhelming majority (76\%) of Canadian marriages were performed by clergy, and in Ontario, this number was as high as 98.5\%.\footnote{See M. Eichler, “Marriage and Divorce” in \textit{The Canadian Encyclopedia} \url{http://www.thecanadianencyclopedia.com/articles/marriage-and-divorce} (accessed 15 Oct 2012).}

Nonetheless, Jewish and Muslim clergy do not have unfettered control over the marriages of their constituents in North America; the state has a vested interest in recording and ensuring the legality of marriages as well. As Annalee Lepp has observed, "[f]rom the perspective of the state ... since marriage was not only defined as a religious, but also a civil contract which determined such matters as private conjugal rights, family succession, and the disposition of property, it was necessary to subject religious officials to some form of legal regulation.

\footnote{Annalee Lepp, \textit{Dis/membering the Family: Marital Breakdown, Domestic Conflict, and Family Violence in Ontario, 1830-1920} (Toronto: University of Toronto Press, 2006 ), 51.}
Marriages needed to be registered with the state, and eventually, so did clergy wishing to perform marriage ceremonies, in order to prevent marriage fraud and illegal unions.

But while marriage represents an area of shared jurisdiction between religious and secular authorities, divorce was and continues to be the responsibility of the state alone, perhaps owing to the fact that divorce was frowned upon by the Catholic Church and was not so readily available even among Protestants. Again, despite being under the jurisdiction of the federal government beginning in 1867, divorce was not widely available in Canada until 1968 when the federal Divorce Act was passed, which added ‘marriage breakdown’ as grounds for divorce.  

Although Jewish and Muslim women had always had access to divorce in their respective communities (at least in theory), these religiously-recognized divorces were and continue to be meaningless from the perspective of the state. If members of these faith communities wish to remarry, they must first obtain a state-recognized divorce.

Hence, unlike their counterparts in Israel and Muslim-majority countries where personal status laws continue to be deeply influenced by halakha and fiqh respectively, Jewish and Muslim religious leaders residing in North America have more limited sway when it comes to effecting and affecting marriage and divorce laws. Nonetheless, that power is not insignificant. Indeed, as we have noted, due to the history of marriage in North America, Jewish and Muslim clergy perhaps have more control, both formal and informal, over their communities when it comes to marriage than any other area affecting their constituents’ religious lives. But it is important to note, that this power to solemnize marriages solely derives from the state itself; without this state sanction, Jewish and Muslim clergy have no enforcement capabilities, or formal powers, of their


46 For examples of the influence that religious authorities in Israel and Muslim-majority countries have on marriage and divorce, see Chapter 3, note 352.

47 For example, both Jewish and Muslim religious leaders can refuse to perform same-sex marriages; rabbis can refuse to officiate at a wedding between a Jew and a non-Jew, while Muslim officials can decline to oversee the union of a Muslim woman with a non-Muslim man. On contemporary views of intermarriage between Muslim women and non-Muslim men, see Kecia Ali, Sexual Ethics and Islam: Feminist Reflections on Qur’an, Hadith, and Jurisprudence (Oxford: OneWorld Publications, 2006), 16-21. The official stance of the Reform Rabbinate on interfaith marriages was articulated in the Central Conference of American Rabbis’ 1973 resolution which, “declares its opposition to participation by its members in any ceremony which solemnizes a mixed marriage.” See the website of the Union for Reform Judaism, http://urj.org/ask/questions/intermarried/ (accessed 14 Nov 2012).
own. How is it that Jewish and Muslim religious leaders, who were once highly esteemed and even regarded as powerful in their respective communities, have come to have such a contracted sphere of influence? To understand the reduced role of rabbis and jurists in North American Jewish and Muslim communities, we need to briefly examine how halakha and fiqh were irrevocably altered by modernity.

The Incredible Shrinking Sphere of Rabbinic Control: A Brief History of Jewish Authority in the Post-Enlightenment Period

The extent to which Jews in different communities lived according to Jewish law at different points in history is a topic of debate. While material evidence from the late antique period suggests that several communities of Jews were either not aware of, or simply did not conform to, the dictates of rabbinic Judaism, by the early Middle Ages, Jews in both Ashkenaz and Sepharad, as social and legal aliens in their host countries, relied upon Jewish law to a large extent as far as most civil and ritual matters were concerned. It was the community’s touchstone, defining their status and how they were to live together and amongst their non-Jewish neighbours. Medieval rabbinic authorities acted as political and spiritual leaders of each local community; while they tended to look to the Talmud as the last word on most matters,

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48 The pluralism of Jewish praxis, even in the pre-modern period, has been captured well by Jacob Neusner who has stated, “there is not now, nor has there ever been a single Judaism … Taken all together, Jews have believed everything and its opposite about the critical components of a religion: God, community and the holy way of life.” See Jacob Neusner, An Introduction to Judaism: A Textbook and Reader, (Louisville, KY: Westminster John Knox Press, 1991), 385. Michael Satlow has similarly written on the concept of multiple “Judaisms.” See Creating Judaism: History, Tradition, Practice. (New York: Columbia University Press, 2006), 5.


51 The decisions of the Talmud were considered closed and could not be re-opened by later generations of scholars. Nevertheless, some rabbinic authorities such as the Rabbi Avraham ben David of Posquières (1125-1193), also known by the acronym Ravad, even suggested that the authority of the Geonim was such that their decisions were off limits to later scholars. Nonetheless, two contradictory approaches emerged regarding the relationship of later scholars to their predecessors: on the one hand, they were seen as inferior to those who had come earlier; yet at the same time, another approach categorized them as dwarves on the shoulders of giants who could see farther, since they had the advantage of both the accumulated wisdom and perspective to see it longitudinally. For a more in-depth
these later authorities did have at their disposal some mechanisms for adapting the law if necessary: *takanah* (an ordinance to address socio-political factors that might otherwise negatively affect the entire Jewish polity); *hora’at sha’ah* or temporary, emergency measures, due to a very particular situation, with no precedent-setting powers); *gezara* (precautionary regulations meant to protect people from trespassing biblical laws); *sevara* (the use of reason to infer laws, instead of appealing to an earlier authority); and *minhag* (a formal sanctioning of long-standing, popular custom).\(^{52}\) While medieval Jewish community leaders would, on occasion, enact ordinances, such as the ban on polygyny, that covered a wide range of civil and religious matters, as time would go on, and especially after the codification of the Shulhan Arukh, the ability to use these tools would be more and more circumscribed.\(^{53}\) Furthermore, once the Jews of Europe began to be emancipated, being granted more rights as members of the nation-states in which they lived, the unique hold that Jewish law and praxis – and rabbinic authorities – had over their lives began to crumble. And this significantly contracted the sphere of rabbinical influence. Indeed, as Tamar Ross has noted, with the emancipation of the Jews of Europe and the further fragmentation of Jewish authority in the post-Enlightenment period,

most rabbinical decision-making was restricted de facto to ritual matters such as prayer, observances of the Sabbath and festivals, and kashrut [kosher laws]...Outside of Israel, the main halakhic function of [today’s] pulpit rabbis...is simply to disseminate information regarding existing halakhic practice. Actual decision-making – applying and adjusting the existing law to changing conditions – is reduced in most cases to a minimum.\(^{54}\)

It is this factor that leaves traditional rabbis impotent when it comes to finding contemporary solutions to halakhic problems, such as that of the aguna. Interestingly enough, this was a problem made worse by the involvement of secular/civic authorities in marriage and divorce. Historically, the status of the aguna was generally restricted to those whose husbands had disappeared at sea or in times of war; until there were witnesses who could verify that the man had died, these women could not remarry, so as to prevent inadvertent instances of adultery and

\(^{52}\) See Tamar Ross, *Expanding the Palace of Torah*, 50.

\(^{54}\) See Tamar Ross, *Expanding the Palace of Torah*, 51.
mamzerut. While such cases did arise, they were not commonplace. However, once Jews could end their marriages through a secular court, there was no longer a need to engage with the rabbinic court at all, and a get seemed less necessary if a man wanted to remarry, since state authorities were ultimately responsible for recognizing marriages as well. The intervention of the state made possible, in some sense, the exponential growth of recalcitrant husbands and chained wives, at least from the perspective of the observant Jewish community. Although today, men still go missing (i.e., on the battlefield, due to acts of terror, etc.) rabbis make every effort to resolve these situations and may lower the burden of proof so that women are allowed to remarry. But where a man who is known to be alive simply refuses to give a get, halakhic stringency regarding the need for his consent still seems to apply, leading one to wonder whether rabbinic lack of authority or lack of leadership is the source of the modern aguna problem. Nonetheless, it is indeed interesting that Ross identifies issues of prayer and dietary laws— and not marriage—as the main issues still governed by Jewish religious authorities in the contemporary world. As we shall see in Chapter 5, it is precisely these areas, along with questions of modesty and sexuality, which came up most consistently as areas of concern in my discussions about religious legal praxis with Toronto-based Jewish and Muslim women, and it is in these areas where they are most likely to adapt their personal praxis.

Pre-Modern Muslim Religious/Legal Authority: Jurists and the State

While in the case of Judaism, recognition of Jews as citizens finally entitled them to rights governed by states and succeeded in undermining the monopoly of Jewish law on Jewish community members, among Muslims, the structure of Islamic law was also altered irrevocably by the interference of the state—both from Muslim empires as well as foreign powers—in the

55 While it is the husband—not the rabbinic court—that grants the get, the rabbinic judges do oversee the execution, signing and receipt of the get document in order for it to be considered valid.


57 Although to refer to ‘states’ in pre-modern contexts is anachronistic, I use the word here merely to connote ‘governing power’, which, in the case of Islam generally means the ruling caliphate. For more on the use and abuse of the term “state” in the context of pre-modern Islamic law, see Anver Emon “On Sovereignties in Islamic Legal History” in Middle East Law and Governance 4, no. 2-3 (2012):265-305.
configuration of the law. Indeed, to some extent, in the pre-modern period, the legal autonomy granted to Muslim jurists was not entirely dissimilar to the autonomy granted to the rabbis in overseeing Jewish communal affairs.\(^{58}\) Among Muslims, the arbitration powers of Muhammad eventually extended to the Companions, but with the territorial expansion of Islam, this was no longer a workable model. By the middle of the 8\(^{th}\) century, a vast and complex network of centrally-appointed judges and local courts had been created throughout the Muslim empire to respond to the legal needs of local Muslim communities. Informal jurisprudence using Prophetic traditions, accepted practices of the community at large, and individual powers of deduction would eventually crystallize into several schools of law, each identifiable with – and eventually named after – a particular leading jurist, and defined by a distinct legal philosophy or preferred methodology for deriving law from the sources. By the 10\(^{th}\) century, only four Sunni schools would remain: Hanafi, Hanbali, Maliki and Shafi’i. Each of these schools was comprised of a hierarchy of muftīs, leading jurists in a particular region, who, in the context of the court system, would work in tandem with qadis, officially-appointed judges chosen by the sultan or caliph from among the ranks of the jurists. While the muftīs were primarily concerned with legal doctrine, and in the case of the more senior jurists, deriving new law from the sources of fiqh, the qadis were tasked with deciding and enforcing the law based on the rules of fiqh as well as directives from government about matters of public administration. When a dispute arose, the qadi would summarize the facts of the case in the abstract, including information about relevant testimony, and request a fatwā, or legal opinion, from the muftīs associated with his court, or in more complicated cases, an esteemed muftī from the area.\(^{59}\) In the fatwā, the muftī would provide an opinion based on the substantive law established in his school, and would include an

\(^{58}\) I am not suggesting that the always precarious position of the Jews in Europe – who were under constant threat of expulsion throughout the Middle Ages – was similar to that of Muslim populations living as non-dhimmis in Muslim lands. However, I am positing that the legal autonomy that legal scholars in both communities enjoyed, given the general lack of state interference even in Muslim lands, has some parallels and is the reason that some contemporary legal scholars look to Judaism and Islam as examples of legal systems that are not dependent on the state for compliance and enforcement. See Robert Cover, “The Supreme Court – 1982 Term. Forward: Nomos and Narrative.” \textit{Harvard Law Review} 97 (1983): 4-68; Asifa Quraishi, “Interpreting the Qur’an and the Constitution: Similarities in the Use of Text, Tradition and Reason in Islamic and American Jurisprudence” in \textit{The Cardozo Law Review} 28:1 (2006):72.

\(^{59}\) Muftīs were also asked to provide fatāwā (plural form of fatwā) to lay-practitioners who had questions about how to correctly enact fiqh in their daily lives. However, most of these fatāwā have not survived. By contrast, many court-commissioned fatāwā are available, as the qadi would include it as part of the outcome of the trial in his register, known as a sijil. See See David Powers, \textit{Law, Society, and Culture in the Maghrib, 1300-1500} (Cambridge: Cambridge University Press, 2002), 19-20.
explanation of the legal issues at stake as well the rationale behind his decision. However, this legal opinion by itself was not considered binding; it would only take on the force of law if the qadi used the fatwā as the basis of his ruling. Indeed, although the muftī was regarded as a legal expert, only the qadi was empowered by the government to adjudicate between competing sources of evidence. While the decisions of qadis were not completely insulated from directives by the ruling elites, the governance-related interests of the caliphate (collecting taxes, keeping public order, etc.) were ultimately to remain subordinate to the substantive law as formulated by the law schools. Hence Islamic law in the pre-modern period worked by striking a delicate balance between siyasa shari’a – the needs of the rulers to maintain the state and remain in power – and fiqh, the jurist’s intellectual efforts to derive God’s law from the sources/principles available to them: the Qur’an, the Sunna, ijmā’ (juristic consensus) and qiyas (analogical reasoning).

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64 Al-Shafi’i is often credited with setting out the four main sources and giving coherence to the uṣūl al-fiqh, the principles of jurisprudence. However, examples of the use of qiyas (analog) and istihan (juristic discretion) among the Hanafis and the consensus of Medina among the Malikis were in place long before Al-Shafi’i penned his foundational work *Al-Risala*. On the other hand, the impact of *Al-Risala* does not seem to have been felt until at least a century after it was first published. See Hallaq, “Was As-Shafi‘i the Master-Architect of Islamic Jurisprudence,” *International Journal of Middle East Studies* 25:4 (1993):587-605. As Hallaq explains, al-Shafi’i was the first to attempt to synthesize the approaches of the two dominant camps in his day, the traditionalists (ahl al-hadith) and the rationalists (ahl al- ra’y). However, his vision did not achieve widespread approval until long after his death, when the two dominant schools had no choice but to reconcile. Nonetheless, all four schools of law would come to agree, with some modifications and additions, on the four-fold schema that al-Shafi’i presented.

65 The Qur’an and Prophetic traditions were an obvious starting point for law, as they were understood as the closest approximations to the divine will.

66 Ijmā’ was a more controversial, yet equally authoritative instrument. As Hallaq explains, “consensus ratifies as certain a rule that was otherwise based on probable textual evidence...cases or rules upon which there was consensus was limited, constituting less than 1 percent of the total body of law. Yet because these cases were subject to this extraordinary instrument, they were deemed especially important.” See Hallaq, *Introduction to Islamic Law*, (Cambridge: Cambridge University Press, 2009), 22. Any precept derived by consensus was understood as yielding certain knowledge, of the same degree as the certainty bestowed upon the Qur’an and recurrent hadith. So in order to utilize qiyas or inferential reasoning, one first had to be aware of cases upon which there was consensus, so as not to
Islamic Law in the Face of Modernity

Islamic law and custom would remain the dominant forms of legal authority in the Muslim world until the 17th century when European colonial powers would begin to tinker with this system. European involvement coupled with attempts at legal reform within the crumbling Ottoman Empire a century later would result in the overall weakening of the power of the jurists. In the case of India, for example, the British began to streamline the system of law in use across the country, hoping to do away with the messy legal pluralism characteristic of both Muslim and Hindu jurisprudence. Qadis and muftīs had initially been absorbed by the British administration as low-ranking officers of the law to help deal with local concerns. However, the British eventually found it was easier to cut out these middle men and instead they commissioned the translation of several classical works of Islamic law into English. In the process, they managed to wrestle the unsystematic and intentionally pluralistic fiqh manuals into a coherent law code, while divorcing the laws from their context and tradition of commentary. As Hallaq explains, this process eviscerated the Islamic legal profession by deleting the need for Muslim jurists.68 The Ottoman state – feeling threatened after their territorial holdings were usurped by the Hapsburg and French empires – similarly initiated a codification of Islamic law.

reopen an issue effectively deemed to be closed by the majority of scholars. Hence, inferential reasoning was only really possible in the instance of new cases or cases where there remained khilaf, juristic disagreement.

67 For Al-Shafi’i, qiyas and ijtihād were essentially synonymous – indeed qiyas was the only form of ijtihād which he would allow. For jurists who came after him, ijtihād would be understood as “the effort exerted by the jurist in exercising his interpretive and reasoning faculties – an elaborate process that included qiyas as well as more general and wide-ranging methods of a hermeneutical or linguistic nature” See Hallaq, Origins and Evolution of Islamic Law (Cambridge: Cambridge University Press, 2004), 115. Nonetheless, qiyas for al-Shafi’i does not generate norms itself, rather it is a way of deriving or discovering from the revealed text how to proceed in new situations. He allowed this, as opposed to other forms of ra’y, or reason, since he conceded that the revealed texts “do not afford a direct answer to every eventuality.” See Hallaq, Sharia: theory, practice, transformations (Cambridge: Cambridge University Press, 2009), 51. The Hanafis would expand on what tools were available as part of r’ay, utilizing istiḥan (juristic discretion) and ‘urf (local custom) as further principles for deriving law and the Hanbalis, who relied on textual precedents and tended to make lawful anything that was not expressly forbidden, rejected the use of qiyas as a source of law, but accepted it as a viable tool in extreme cases. The Malikis would add to qiyas, maslahah (considerations of public interest), ‘urf (custom), istiḥsan (juristic preference), istishab (presumption of facts based on probability), and sadd al-dhara’i’ (‘blocking the means’, i.e., forbidding that which may lead to a haram act). The other three schools would develop varying positions on the validity of each of these tools. See Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, (Cambridge: Islamic Text Society, 1991). The notion of taqlid, that lower-ranking jurists needed to follow in line with the position of the leading jurists in the school, would later be understood as the much discussed “closing of the gates of ijtihād,” a position associated with the scholar Joseph Schacht in his An Introduction to Islamic Law (Oxford University Press), 70–71. The validity of this idea, would come under fire during the period of Islamic revivalism.

68 Hallaq, Introduction to Islamic Law, 86.
Using the dominant Hanafi school as a model for the code, the Ottomans also incorporated elements from other schools, in a process known as takhayyur, or selection, which classically, was meant to be limited to the choosing between rulings in the same madhab. This too weakened the integrity of the Islamic legal system, as the independent schools and the reasons animating their different positions were no longer meaningful. Eventually, the madrasa and Islamic court system would be replaced in most Muslim jurisdictions by “Western style law schools, European law codes and European courts.”

While European law codes now served as the basis of commercial and criminal law in most Muslim states, in matters of personal law, traditional fiqh “remained the central reference, albeit suffering small or large alterations.”

Modern Legislation and the Circumscribing of Women’s Rights: The Case of Khul’a

In most cases, the results of these Western-Islamic legal hybrids have not been advantageous for women; personal law reforms have taken away rights from women, rather than ameliorating the inequities presented by traditional laws. In particular, access to khul’a, or divorce for compensation initiated by the wife, an option explicitly mentioned as licit in both the Qur’an and the Sunna even without a husband’s consent, and which Kecia Ali has referred to as “the most egalitarian reform [of personal status laws] possible without a major transformation of the legal structure of marriage” seems to have fallen victim to the reform process. Judith Tucker has

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71 On khul’a divorce, see Q 2:229: “A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by God. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by God, there is no blame on either of them if she give something for her freedom. These are the limits ordained by God; so do not transgress them if any do transgress the limits ordained by God, such persons wrong (Themselves as well as others)...” The hadith most often cited is, “The wife of a man called Tha’bit ibn Qays came to the Prophet and said [in complaint against her husband]: ‘I do not find any fault in Tha’bit’s religious commitment or his morals but I dislike him so much and cannot continue to live with him for fear that he drive me to apostasy.’ The Prophet asked her: ‘Will you give back to him the garden he gave you [as a dower]?’ She replied: ‘Yes.’ The Prophet ordered Tha’bit to take back the garden and divorce his wife.” See *Sahih Bukhari* 1987, vol. 5, p. 2021. Despite the fact that these sources only mandate that the wife return her dower and require no consent on the part of the husband, most pre-modern jurists still maintained that a husband’s consent is required. See Kecia Ali, *Sexual Ethics*, 34.

72 See Kecia Ali, *Sexual Ethics*, 34.
noted the way the 1917 Ottoman Law of Family Rights (which remains the law for Muslims in both Lebanon and Palestine until today and was valid in Syria and Jordan until the late 1940’s/early 1950’s) did little to expand women’s access to divorce, which was part of the original intention behind reform. The legislation was virtually silent on the option of khul’a, and it restricted the options available for annulling a marriage, rather than expanding them. She illustrates that the flexibility characteristic of the qadis in applying the law in the pre-modern period would vanish once these laws were codified. Similarly, while the adoption of the Swiss Civil Code in Turkey in 1926 made it possible for either a husband or a wife to petition for divorce, it eliminated the possibility of no-fault divorce entirely, including wife-initiated khul’a. To this day, both men and women must provide ‘grounds’ for divorce (i.e., adultery, desertion, ill-treatment, insanity and ‘irretrievable breakdown of marriage’) if they wish to separate in contemporary Turkey. The desirability of khul’a divorce over other available options for exiting a marriage has been further noted in a Human Rights Watch report on divorce laws in contemporary Egypt. As previously noted, there are many financial burdens that a woman must assume in the case of khul’a divorce, including forfeiting her dower, other marital assets and any future support. Nevertheless, khul’a is still preferred even by women who have suffered significant harm in their marriages, and who would otherwise be entitled to a fault-based divorce and financial compensation from their husbands. This preference for khul’a despite the financial penalties is due to “concerns over the considerable time, effort, and uncertainty involved in seeking a fault-based divorce.” A few states, including Egypt, have attempted to restore a woman’s Qur’anic right to khul’a. These reforms maintain that a woman can get the court to impose the divorce even against a husband’s consent. This position goes against most

73 Tucker illustrates that although according to Hanafi law there were few acceptable scenarios for annulling a marriage (impotence, insanity, disease), Hanafi judges would often have Shafite or Malikite judges rule in annulment cases so as to broaden the grounds for annulment to include desertion by the husband and not leaving a wife with adequate means of support. See Judith Tucker, “Revisiting Reform: Women and the Ottoman Law of Family Rights, 1917,” Arab Studies Journal, 4, 2 (1996): 15.

74 Idem. This same point has been made by Amira Sonbol in her introduction to Women, the Family and Divorce Laws in Islamic History ed. Amira Al-Azhary Sonbol, (Syracuse, NY: Syracuse University Press, 1996), 12-14.


76 F Deif, Divorced from Justice: Women’s Unequal Access to Divorce in Egypt (New York: Human Rights Watch, 2004), 49.
pre-modern jurists’ assertion that a husband’s consent is still necessary for khul‘a, and consequently incites controversy, even with the backing and support of leading jurists from al-Azhar University, the leading Sunni institution in the Muslim world.\textsuperscript{77} Hence despite attempts at reform in modern Muslim states, marriage and divorce laws continue to disadvantage women, a situation exacerbated by the fact that contemporary judges and jurists a) no longer hold the same esteem as their predecessors, and b) are no longer able to incorporate flexibility into the law, and are instead now bound by more rigid, modern legal codes.

\textbf{Changing Nature of Muslim Leadership: The Shift from Jurist to Imam in North America}

While a truncated ʿulamāʾ still wields some limited power in Muslim-majority countries, in North America, as Kecia Ali has pointed out, “there is no such class of individuals to serve as an anchor or foil for Muslim public and private discussions” of important issues.\textsuperscript{78} But she goes further than merely pointing out that there is a power vacuum among Muslims in the West. She alleges that “many Muslim thinkers and authors who are perceived as authorities, and who write and speak from a position of authenticity, are not themselves fully grounded in the classical tradition; they have a selective and often incoherent relationship to law and scriptural interpretation.”\textsuperscript{79} She nonetheless acknowledges the important role of religious authorities even in the West, and that some Muslims are “lucky enough to have a respected and thoughtful imam or other spiritual figure at our mosque or in our community” that can help them “make ethico-legal decisions about our intimate lives.”\textsuperscript{80} Indeed, Yvonne Haddad has commented on the expanded role of imams in the West,

\begin{quote}
In the Muslim World that role is normally centred on leading prayers and instructing members in the Qur’an and Islamic Law. In America, however, the religious leaders maintain the mosques, provide counselling services similar to those offered by the Christian clergy, and act as Islamic spokesmen to communities in which Islam is little-known and even less understood.\textsuperscript{81}
\end{quote}

\begin{flushright}
\textsuperscript{77} Kecia Ali, \textit{Sexual Ethics and Islam}, 34.
\textsuperscript{80} Kecia Ali, \textit{Sexual Ethics and Islam}, 152.
\end{flushright}
Nonetheless, because of inadequate training and a lack of familiarity both with Islamic texts as well as North American mores, these imams may be ill-equipped to help contemporary Muslims navigate issues pertaining to mahr, extra-judicial divorce, and drafting marriage contracts that reflect more egalitarian values.

Consequently, while Jewish and Muslim religious leaders in the past may have had some limited means for addressing problems caused by traditional marriage and divorce laws – from putting social pressure on Jewish husbands to agree to divorce their wives, to allowing judges from madhabs with more flexible annulment provisions to rule in divorce cases in Hanafi jurisdictions, this is no longer the case. Indeed, both the historical circumstances alluded to above, as well as the post-traditional context of North America, has rendered contemporary Jewish and Muslim spiritual leaders somewhat impotent to resolving the issues that arise from unequal provisions for divorce and the failure to pay deferred mahr.  

While their pre-modern predecessors had (and some of their contemporaries in other parts of the world continue to have) various types of formal power to amend religious law and alleviate religious restrictions, North American rabbis and imams lack both official credibility and formal mechanisms through which to change religious laws. Although they are still influential as community leaders and teachers, and still wield some informal power among their adherents as officiants of life-cycle events such as weddings, it is precisely this lack of formal authority among rabbis and imams which has driven many women to seek solutions for these intractable problems in secular court rooms.

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82 The term “post-traditional” is often associated with the work of sociologist Anthony Giddens, who applies it to societies that are ‘modern’ in that their core institutions, actions and attitudes do not simply repeat the actions of those that came before them for the sake of giving deference to a traditional way of life. According to Giddens, when tradition dominates in a society, that society is not self-reflexive, as individuals are not required to consider the implications of their actions, given that most activities are prescribed by custom. See Anthony Giddens, Modernity and Self-Identity: Self and Society in the Late Modern Age, 14. However, since Giddens theory allows little room for religion to flourish in secular –liberal societies (see ibid., pgs. 142, 150), my use of the term follows the way it is employed in Kecia Ali’s work as a context in which one has “the luxury of deciding whether and how to apply religious doctrines in [one’s] own life.” See Kecia Ali, Sexual Ethics, xxii.

Why Do Women Maintain Religious Legal Commitments?

But this turn to secular law to remedy religious difficulties raises several interesting questions. If religious legal systems offer such poor results for women, particularly when it comes to personal status issues, one might wonder why women would choose to live in the interstices between two systems of law rather than at the centre of one legal regime. If secular laws are generally far more favourable to women than religious ones, why do many Muslim and Jewish women continue to maintain their cultural and religious affiliations? And if adherence to halakha and fiqh is wholly voluntary in twenty-first century North America, why not reject religious law entirely?

Indeed, political theorists such as Susan Okin have suggested that all minority group cultures subjugate women, and that women hailing from these communities might be “much better off…if the culture into which they were born were...gradually to become extinct.”\(^{84}\) Consequently, she advocates that participating in secular-liberal citizenship rights should require one to forgo previous group and identity affiliations. However, as Ayelet Shachar has noted, Okin’s extreme position does not recognize the fact that women may find their cultural and religious affiliations to be a source of “power, meaning, and resistance (vis-à-vis the larger society or internally).”\(^{85}\) Despite her disadvantaged status in her own culture, a woman may feel doubly marginalized by the culture of the dominant group which does not necessarily recognize her values and socio-cultural practices. Rather than being forced to choose between her citizenship rights and her group affiliation, a woman might prefer to work within her cultural framework in order to infuse old practices with new meanings. Indeed, we shall see this in Chapter 2 as we examine the ways in which female interpreters of scripture grapple with traditional/patriarchal interpretations and make the case for alternative readings of foundational texts that do not subjugate women.


Furthermore, as Tamar Ross has noted, there are complex considerations vis-a-vis cultural membership for women whose community is characterized not only by a system of beliefs, but by a distinct praxis as well,

The sociocultural ramifications for a Jew who chooses to leave the religious fold are much greater than for a lapsed Christian. Jews – like Moslems — cannot divorce their spiritual experience from their social and cultural ties without incurring some form of identity crisis. Religious observance in the modern age has become for many a symbolic mode of communal identification, a sociological sign of one’s ‘Jewishness’ … For some Jewish feminists, this constraint is further reinforced by the experience of the Holocaust. Reluctance to dishonour the dead by defection may be accompanied by the suspicion that the outside world will never accept a Jew, even when she rejects her original religious affiliation. As for more ideological concerns, Judaism has always maintained a decidedly legalistic bent, viewing halacha, or religious practice, as its main vehicle for worship and spiritual expression…even in non-Orthodox circles, theological dissent generally does not involve a complete break with the Jewish religious tradition.  

This last point, about the prevailing nature of religious practice even among those who self-identify as non-Orthodox, will be echoed in the writings of Rachel Adler, which shall be examined in Chapter 3. Although Adler’s work speaks more specifically about halakhic practice and Judaism, she illustrates the way that religious law more generally can be understood as “authentic… language for articulating the system of obligations that constitute the content of the covenant...” She understands religious law as a praxis, as “a holistic embodiment in action at a particular time of the values and commitments of a particular story,” which makes it an appropriate vehicle for all sorts of religious ideals and beliefs. Similarly, Chapter 5 will explore the way that Jewish and Muslim laywomen who have a complicated relationship with the concept of religious law are nonetheless committed to various articulations of religious praxis, suggesting that simply abandoning what one regards as a personal and communal obligation is

86 Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism*. (Lebanon, NH: Brandeis University Press, 2004) 116-117. While Ross sees issues of identity and praxis as being more salient among Jews and Muslims, similar complications would likely arise among women in many Christian communities, particularly those who are Amish, Mormon, or even Catholic nuns. Still, Ross’ point drives home the important place of ‘the law’ across the denominational spectrum in Judaism, that arguably could ring true for many Muslims as well, regardless of sectarian and ethno-cultural affiliations.


88 Idem. In the conclusion, Adler’s use of ‘praxis’ will be contrasted with Tal Asad’s and Saba Mahmood’s notion of ‘ritual’. See Conclusion, 330-333.
Religious Identity ‘Before the Law’: Involuntary and Collective

Indeed how ‘voluntary’ are such religious commitments? Ross’ first point in the above quote, that traditional praxis has become a marker of cultural identity as much as a sign of religious observance, which makes fully rejecting religious law a non-option, is also worth exploring further. The works of legal theorist Richard Moon and political scientist Avigail Eisenberg are instructive here as both have commented on the nature of religious identity in secular legal claims. Moon has noted that an individual’s religious commitment is not merely “[an] assumption that a set of beliefs is true or right,” but rather must be regarded as “a deeply rooted part of the individual’s identity.”

In an article discussing the appropriateness of the state interceding in the landmark Canadian get case Bruker v. Marcovitz, in which Stephanie Bruker sued her husband for breach of contract for failing to provide her with a get as per their one of the clauses in their Consent to Corollary Relief Agreement, Richard Moon reflects on the ‘involuntary’ nature of religious commitment,

If religious adherence was simply a personal commitment or choice and religious association was purely voluntary, it would be difficult to justify state intervention into the affairs of a religious community. Respect for individual autonomy or liberty would preclude the state from intervening to protect individual members from their adherence to unfair laws or rules. An individual, who chooses to become, or remain, a member of a particular religious group, may be seen as voluntarily submitting to the spiritual laws of that group, or to the group’s authority structure. If the individual objects to the group’s norms (the group’s interpretation/application of higher law), she/he can decide to withdraw from the group and live within the larger community, under state law. The state may have a role in ensuring that membership in the religious community is truly voluntary, and that members have a genuine right of exit, but the state should not otherwise interfere in the internal operation of the community. Once we recognize that the religious adherent’s identity is tied to her/his religious community, then the issue of the “voluntariness” of her/his membership becomes more complicated. The individual’s social and psychological ties to her/his community are sometimes described as barriers to her/his exit, similar to the

economic costs that may deter her/him from leaving the community… There may be communities that are so insular, because of factors such as location and language, that even if members are “free” to exit, they may be unable to imagine other forms of association or other value systems. Membership in such a community may be viewed as involuntary and state intervention may sometimes be justified to protect the individual from unjust rules or to ensure that she/he is exposed to other options. 

Consequently, Moon reinforces Ross’ suggestion that living out one’s religious praxis is as much about one’s “social and psychological ties” to community as it is about “submitting to the spiritual laws of the group.”

While Moon’s writings emphasize the involuntary aspects of religious praxis and identity, Eisenberg’s work emphasizes the collective nature of religious praxis, which needs to be balanced against individual interpretation and variations in custom. In the context of assessing the Supreme Court of Canada decision Syndicat Northcrest v Amselem, Eisenberg concludes

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90 Moon, “Bruker v. Marcovitz: Divorce and the Marriage of Law and Religion”, *Supreme Court Law Review* 42 (2008):59-60. Interestingly enough, Moon does not regard Bruker’s involvement in the Jewish community as “involuntary in this sense. She had not always lived within the community and even when she became more closely tied to it, she took a selective approach to its rules.” This strikes me as an odd assessment of her religious commitment, especially since, as Moon himself points out “rules are sometimes contested” (61). Furthermore, since it is Mr. Marcovitz who ultimately claimed that his religious freedom was being compromised by the original contract, it seems unusual that Moon does not make similar evaluative statements about Mr. Marcovitz’s “approach to the rules” of Judaism. Finally, as was recently noted by Justice McLachlin in the majority ruling in *R. v. N.S.*, “A sincere believer may occasionally lapse, her beliefs may change over time or her belief may permit exceptions to the practice in particular situations. Departures from the practice in the past should also be viewed in context; a witness should not be denied the right to raise s. 2(a) merely because she has made what seemed to be a compromise in the past in order to participate in some facet of society.” See *R. v. N.S.*, [2012] SCC 72, at para. 13, [http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/12779/index.do?r=AAAAAQAFbmlxYWIAAAAAAAAB](http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/12779/index.do?r=AAAAAQAFbmlxYWIAAAAAAAAB) (accessed 13 Feb 2013). A lapse in practice then does not necessarily make one’s participation in the tradition any less involuntary.


92 While Moon utilizes the word identity uncritically in his writing, Eisenberg does engage with current sociological and anthropological arguments that identity is a problematic category, which “should be treated as a useful fiction, ‘a sort of virtual center to which we must refer to explain certain things, but without it ever having a real existence’ (Claude Lévi-Strauss in Lévi-Strauss (ed.), *L’identité*.)” Although Eisenberg suggests that identity claims may not be the best way to advance the rights of vulnerable groups, she nonetheless argues that dispensing with identity as a category altogether is not pragmatic, especially given that public institutions continue to invite groups to frame their cases “in terms of how an aspect of their identity generates a claim to distribute resources, entitlements, power, or opportunities one way rather than another.” See Avigail Eisenberg, *Reasons of Identity: A Normative Guide to the Political and Legal Assessment of Identity Claims* (Oxford: Oxford University Press, 2009), 12; 19.

93 At issue in *Syndicat Northcrest v Amselem*, was whether a Quebec condominium’s by-laws infringed upon a condominium owner’s religious freedom by prohibiting him from building a sukkah (a temporary hut traditionally erected during the Jewish festival of Succot) on his own balcony. Although the collective owners of the building,
that legal tests of ‘sincerity’ based on an individual’s subjective understanding of his or her religious practice are an insufficient means of evaluating whether a religious claim is ‘authentic’ or ‘fraudulent’. As Eisenberg explains, using a claimant’s sincerity (which examines one’s “demeanor while testifying, their honesty and credibility, their previous religious experience, and the relation between this previous experience and the current belief in question”)

Eisenberg, Reasons of Identity, 104. Testimony by two rabbis in the lower Quebec Court suggested that a communal succah was sufficient for meeting holiday obligations and the court ruled that there was no infringement upon Amselem’s freedom of religion. However, the Supreme Court overturned this decision, finding that “religious fulfillment is by its very nature subjective and personal”, and that because “Mr. Amselem sincerely believes that he is obligated by the Jewish religion to set up and dwell in his own succah, then a prohibition against setting up his own succah obliterates the substance of his right...A communal succah is simply not an option. Thus, his right is definitely infringed.” See Syndicat Northcrest v. Amselem, [2004] 2 SCR at para. 72 and 74, (http://www.canlii.org/en/ca/scc/doc/2004/2004scc47/2004scc47.html), (accessed 22 Nov 2012).

Eisenberg, Reasons of Identity, 105.

Eisenberg, Reasons of Identity, 110.

Eisenberg, Reasons of Identity, 108.

As we shall see, this notion of communal support and finding a sub-group within a larger community that will reinforce one’s own interpretation of texts, religious values and practices will be of utmost importance in Chapter 4
Conclusion

Hence, as the work of both Moon and Eisenberg illustrates, while many Jewish and Muslim women cling to their rights as citizens in Canada and the U.S., they do not want these secular entitlements to come at the expense of their Jewish and Muslim identities, identities which themselves are so deeply rooted in religious legal obligations and collective articulations of communal praxis. It is for this reason that North American Jewish and Muslim women continue to both live and marry within a religious framework rather than turning to secular laws and civil authorities alone. Because marriage, much like eating, praying, and adopting certain modes of dress, are powerful markers of social and communal boundaries, it is not simply a matter of Jewish and Muslim women choosing one legal system or set of principles over another, but learning how to navigate both to one’s own advantage, despite the historical odds stacked against them.

To be sure though, this navigation has no straight path. As will become clearer in Chapters 2 through 5, knowing one’s rites/rights and being able to articulate them cogently in the public sphere in order to elicit policy reform may be an outgrowth of the ‘textual confidence’ that both female exeges and laywomen employ when reinterpreting religious texts and adapting religious praxis. Whether engaging with policy-makers and lawyers over their marriage entitlements or academic colleagues, religious leaders and other community members about their overall communal status, instigating change requires women to empower themselves to redefine long-held practices and beliefs.

Indeed, one of the questions at the heart of Amselem for religious communities to ponder is how much interpretive variation can a religious tradition withstand in a pluralistic society? Even in traditions such as Judaism and Islam, in which the proliferation of commentaries over the centuries is immense, such that virtually every imaginable sect and philosophy has offered their own often contradictory understandings of scriptures, are there understandings of texts and practices that are simply beyond the pale? Or is there room for re-reading these texts so that they support more egalitarian visions of communal leadership, ritual participation and male-
female relationships? The next two chapters follow from this one in that they explore how women who choose to remain actively engaged in Jewish and Islamic praxis grapple with textual traditions that have historically marginalized them. In Chapter 2, I look at the scholarly writings of female exegetes who make the Hebrew Bible and the Qur’an the focus of their work, and in Chapters 3 and 4, I will examine the work of women academics who assess more legally-oriented texts such as the Talmud and Hadith, as well as those who engage with halakha and fiqh more generally. Given the problematic nature of religious law as already hinted at in this chapter, is it the impulse of these women exegetes to ignore the legal precepts embedded in the texts and paper over the specific practice-oriented inequities that arise from them? While several of the exegetes we shall examine do tend to emphasize meta-halakhic/meta-fiqhic, theological principles in their work, as we shall see, religious law is too deeply rooted in classical Jewish and Islamic texts to be disregarded completely.
Chapter 2
Departures and Continuities with Tradition: Female Torah and Qur’an Scholars Read “the Law”

Female Exegetes

How do Jewish and Muslim women scholars navigate their ways around textual traditions that have historically marginalized them? Given the shared emphasis on religio-legal praxis, are women exegetes in both traditions availing themselves of similar tools as a way of interpreting their way back into the texts, and by extension, charting new horizons for the women in their communities? Or are contemporary Jewish and Muslim interpretive discourses so vastly different as to preclude any basis for comparison? In this chapter, I will contrast the writings of Jewish feminist exegetes Tikva Frymer-Kensky and Ilana Pardes with one another as well as with the work of Muslim women text-scholars Amina Wadud and Asma Barlas. My comparison will be attentive to their respective engagement with halakha and fiqh in particular, but also their conceptions of scripture, patriarchy, feminism, and whether and how they relate to classical interpretive traditions in Judaism and Islam. In examining the exegetical work of these women through these lenses, I intend to illustrate that, despite some major differences in epistemological assumptions, Jewish and Muslim female scholars are often employing similar hermeneutical strategies in their re-readings of foundational texts.  

1 Although the term “hermeneutics” -- derived from a Greek word meaning ‘to interpret’ -- is not indigenous to either Judaism or Islam, both traditions had an awareness of the difference between the literal text and the interpretations they enacted upon them, despite the fact that at times, these were intentionally blurred. In this work, I shall be utilizing the term hermeneutics to refer to the reading strategies and methodological tools employed by interpreters in making scriptural texts ‘make sense’ to their respective audiences. Since according to the Encyclopaedia of Religion, hermeneutics deals with the nature of the text, what it means to understand a text and how understanding is contingent upon the assumptions and socio-cultural context of the reader, all these ideas will be explored in the context of this chapter. See Van A. Harvey, “Hermeneutics” in Encyclopaedia of Religion, ed. Lindsay Jones, Vol. 6. 2nd (Detroit: Macmillan Reference USA, 2005), 3930-3936.
Identifying the Sources

What constitutes a ‘foundational’ text? Indeed, the question of which texts are considered ‘traditional’ or ‘authoritative’ in both Judaism and Islam is fraught with controversy. For a variety of reasons, in the present study, I have limited the scope to scholars whose writings deal primarily with the Torah, Qur’an, Talmud, Hadith, the halakhic system and fiqh literature. The Torah and Qur’an are obvious starting points in both traditions. Although there is no consensus as to how to best interpret them, the Torah and Qur’an are the primary sources around which all communities of Jews and Muslims have organized themselves throughout history, regardless of denomination, sect and ethno-cultural affiliations.

As for later sources, in the case of Judaism, the sheer number of texts and commentaries which stem from the Torah and the Talmud is awe-inspiring. Jewish law certainly continued to adapt and evolve after the Talmudic period to meet the new socio-cultural, economic and historical challenges which Jewish communities would be faced with. Responsa literature, or compilations of questions and answers addressed to community rabbis on everyday matters of Jewish law, communal custom, and takkanot, or community ordinances arising from particular socio-political factors would all become part of halakha. And in the sixteenth century, authoritative legal codes, such as the Shulhan Arukh, would arise to give order to this complex system of laws. However, only Orthodox Judaism would today regard the latter codes as irrefutably binding. While the Conservative movement has developed its own responsa which may trump earlier codes of law, neither the Reform or Reconstructionist movements recognize even Talmudic law as binding. Nonetheless, the present study will focus on feminist exegesis of both the Torah and Talmud, as even in more liberal movements, they are regarded as a significant source of literature describing Jewish history, theology and culture and serving as the basis of a communal Jewish praxis.

Navigating the voluminous textual landscape in Islam is equally challenging. After the Qur’an, most Sunni Muslims would recognize the Sunna of the Prophet, as recorded in the Hadith, as the next major source of guidance in the tradition. However, as a result of claims of spuriousness

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2 On the status of the Shulhan Arukh in contemporary Orthodox thought, see Mattis Kantor, *Codex Judaica: Chronological Index of Jewish History* (Brooklyn, NY: Zichron Press, 2005), 342.

surrounding the Hadith literature, approaches that limit authoritative texts to the Qurʾan alone, have gained ground in recent decades and have been influential on Muslim feminists in particular. Similarly, as we noted in Chapter 1, for those Muslims living outside of Muslim-dominated countries who are not subject to state enforcement of different shariʿa codes, rulings derived from the fiqh literature may not necessarily be regarded as binding. Nonetheless, in my list of canonical sources, I have included the Qurʾan and well as the Hadith and fiqh compilations, since for the majority of Muslims, these are the significant sources of Islamic law and praxis which continue to inform how practitioners live out their lives. While Islamic literature contains a multitude of genres, including biographies of the Prophet (ṣirah-maghazi), biographical dictionaries of scholars, tafsīr and all its sub-categories, which all have varying degrees of authoritativeness, I have highlighted these particular collections of texts, as they are the ones most relevant to the lives of women and hence most frequently subjected to feminist critique.

Since both the status of the Torah and Qurʾan and the methods of interpretation that are applied to them are different than that of the Talmud and Hadith as well as halakhic and fiqh literature, I will deal with the latter sets of texts separately in the following chapters.

**Women Scholars and Exegetical Traditions**

However, before a critical examination of women’s hermeneutical approaches to the Torah and Qurʾan can be undertaken, it is important to understand these approaches as part of a larger genealogy of exegesis. Hence, a brief examination of some classical interpretive techniques and modern responses to them is in order. Providing such a context is critical, since as both Jane McAuliffe and Barry Walfish have attested, present-day Jewish and Muslim readers are likely to

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4 One such movement is the Ahl-i-Qurʾan in the Indian subcontinent.

5 The controversies around the Hadith and their impact on Muslim feminists will be discussed further in Chapter 3.

be more conversant with classical traditions than their Christian counterparts. Indeed, although contemporary women interpreters of scriptures tend to be highly critical and suspicious of traditional male interpretations of religious texts, as we shall see, their own analyses of scriptures do not emerge in a vacuum.

Midrash

The rabbis’ primary mode of interpretation was Midrash. Midrash was traditionally divided into two types: *midrash halakha*, which pertained to legal matters and attempted to anchor current practice in the biblical text, and *midrash aggada*, which attempted to derive moral and theological teachings from biblical narratives and personalities. But aggada could more generally apply to all the non-legal material found in rabbinic literature, from ethical teachings, rabbinic folktales, historical anecdotes, politics, geography, and even medical advice. Despite this traditional division, the two types of midrash were somewhat fluid, and could be found together, even in works which purported to be more legalistic in nature. Regardless of the type of midrash involved, both employed similar methods for deriving meaning from biblical verses. Rabbinic exegetes found significance in missing letters, repetition of verses, unusual spellings, or obscure words, as they assumed that the biblical text was a perfect, harmonious text, containing no errors or redundancies, and that it was of divine origin. As we shall see, while Frymer-

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8 For this tidy division, see Barry Walfish, “Medieval Jewish Interpretation” in *The Jewish Study Bible*. Eds. Adele Berlin and Marc Zvi Brettler (New York: Oxford University Press, 2004), 1876.

9 The rigidity of these categories has been challenged by several modern scholars. See for example Barry Wimpfheimer, *Narrating the Law: A Poetics of Talmudic Legal Stories* (Philadelphia: University of Pennsylvania Press, 2011).

10 Rabbis also gleaned meaning from the text through the use of puns, *gematria* (attributing a numerical significance to each letter) and *notarikon* (employing abbreviations or acrostics), hermeneutical techniques borrowed and adapted from their Greco-Roman neighbours. After all, this was an oral culture, and homonyms in particular played a unique role in the derivation of meaning. For more on this see David Stern, “Midrash and Midrashic Interpretation” in *The Jewish Study Bible*. Eds. Adele Berlin and Marc Zvi Brettler (New York: Oxford University Press, 2004), 1863-1875.

11 According to James Kugel, undergirding early biblical interpretation were four common assumptions about the nature of the biblical text: it was a cryptic document in need of interpretation; it spoke directly to the ongoing events in their lives; it was a perfect, harmonious text, containing no errors or redundancies; and it was of divine origin. The rabbis were generally thought to have shared these assumptions. See James Kugel, *The Bible As it Was* (Cambridge, MA: Belknap Press, 1999).
Kensky and Pardes also engage in close readings of scripture and share the rabbinic attentiveness to repeated and unusual language in their analyses, they do not assume the Hebrew Bible to be either perfect or divinely revealed.

In the tannaitic period, a series of lists circulated which described some of the principles or rules through which the rabbis elucidated scripture.\textsuperscript{12} While these lists rarely alluded to the specifics of rabbinic wordplay, they did attempt to illustrate that there was an actual method behind the rabbis’ interpretive flights of fancy.\textsuperscript{13} Midrashic anthologies using these techniques collected multiple interpretations on the same passage without privileging the interpretation of one sage over another.\textsuperscript{14} This would remain the dominant style of scriptural interpretation until the rise of Islam, when \textit{peshat}, or plain-sense, commentaries by single authors featuring line-by-line interpretation begin to emerge.\textsuperscript{15} But midrashic interpretations would not disappear entirely. In fact, works that combined these two elements,\textsuperscript{16} such as those authored by the 11\textsuperscript{th} century sage

\begin{footnotesize}
\begin{enumerate}
\item The oldest one is attributed to the sage Hillel the 1\textsuperscript{st}, but was thought to have been expanded upon later by a school associated with Rabbi Ishmael. These lists of hermeneutical principles, known as middot, would appear in the Sifra, the halakhic midrash to the book of Numbers, and Sifre, the halakhic midrash to the book of Leviticus and references to them would be scattered throughout the Talmud. However, it is not always clear how the middot in the lists map on to their application in the Talmud. For a view that pushes this disconnect further and questions conventional scholarly wisdom about the origins and attributions of these principles, see Azzan Yadin, \textit{Scripture as Logos: Rabbi Ishmael and the Origins of Midrash} (Philadelphia: University of Pennsylvania Press, 2004).

\item The techniques described in these lists included deducing from a complex case what would apply in a simple case (\textit{kal va-homer}, or an argument \textit{a fortiori}), inference by analogy (\textit{gezerah shavah}), using one case as a prototype or standard to apply to several others (\textit{binyan av}), limiting a general case to a particular instance and vice versa (\textit{klal u-frat, frat u-klal}), defining an obscure word or phrase based on similar instances elsewhere, and understanding a verse from its context.

\item This proclivity for multiple meanings in midrash being equally ‘true’ is a favourite topic among post-structuralists, liberal halakhists and literary critics. For the way the instability of the text has been utilized in Robert Cover’s writing, see “The Supreme Court – 1982 Term. Forward: Nomos and Narrative,” \textit{Harvard Law Review} 97 (1983): 4-68. But as been noted by several authors, this tolerance for pluralism in interpretation tended to be restricted to aggada and was much more limited when it came to matters of halakha. See David Stern, \textit{Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies} (Evanston: Northwestern University Press, 1996); Suzanne Stone, “In Pursuit of the Counter-text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory,” \textit{Harvard Law Review} 106 (1993): 813-893.

\item Two historical influences -- one external, the other internal -- are thought to have brought about these changes. Through engagement with Muslim scholars, the rabbis became aware of rationalist philosophy, philology and linguistics. Since Muslim exegesis of the Qur’an involved an in-depth study of Arabic grammar (see below), Jews living among Muslims decided that keys to the biblical text may lie in having better understanding of the Hebrew language. At the same time, the rabbis were locking horns with the Karaites, a populist faction who mocked the notion of the oral law and favoured more literalist interpretations of scripture.

\item It is questionable how ‘plain-sense’ these peshat commentaries truly are and whether it is possible to discern the peshat from the drash in many classical works. For a theory that the definitions of these terms are contingent upon
\end{enumerate}
\end{footnotesize}
Rashi, would prove to be the most popular and enduring. Even after the Enlightenment, which would wreak havoc on traditional notions of scripture, Rashi’s winning combination of peshat and midrash would continue to appeal to generations of Jews. As we shall see, contemporary feminist bible scholars such as Tikva Frymer Kensky and Ilana Pardes are among those who cannot escape his exegetical legacy and its charms.

Tafsīr
Taking seriously Walid Saleh’s contention that no Qur’anic commentary can be studied in isolation and that, embedded in every commentary is the whole of the exegetical enterprise that came before it, a brief understanding of the genre of tafsīr is needed in order to evaluate contemporary exegetical efforts by women, especially since they claim, in many ways, to depart from this classical approach. Derived from the Arab root *f*-s-*r*, meaning to explain or expound, tafsīr is the line-by-line commentary of the Qur’anic text. Tafsīr is classically divided into two categories: *al-tafsīr bi-al ma’thur* (tafsīr based on established, transmitted tradition, using hadith) and *al-tafsīr bi al’ray* (based on opinion, using analytical reasoning). However, as has been noted, these terms are more reflective of medieval Sunni polemics than any real differences in hermeneutical method; those whose work seemed to go beyond the pale of Sunni theology in their day were often branded as using tafsīr bi al’ray. As numerous modern scholars have

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17 For a discussion of how the divinity of scripture and its relationship to the oral law begin to be questioned in Jewish circles, see “Modern Approaches to the Hebrew Bible” below.

18 Frymer-Kensky’s work is rife with allusions to medieval interpreters, including Rashi, who she refers to as “the lens by which Jews reads the bible.” See Frymer-Kensky, *Studies in Bible and Feminist Criticism*, 368. She also understands her own commentary as being written under the influence of the ‘holy spirit’ just as Rashi’s was. See *Studies in Bible and Feminist Criticism*, xx. Even Ilana Pardes alludes to Rashi’s “sensitive” commentary on the Song of Songs. See Pardes, *Countertraditions in the Bible: A Feminist Approach* (Cambridge, MA: Harvard University Press, 1992), 174, note 17.


20 See Walid Saleh *The Formation of the Classical Tafsīr Tradition: The Qur’an Commentary of al-Thalabi* (Leiden: Konikije Brill NV, 2004), 16; Farid Esack, *The Qur’an: A User’ Guide*, 136. Western typologies for classifying tafsīr which have borrowed heavily from terms to describe midrash in Jewish Studies have been equally unhelpful. See Ignaz Goldziher in his *Die Richtungen der islamischen Koranauslegung* (Leiden: Brill, 1982) proposed that tafsīr be divided into grammatical, doctrinal, sectarian, mystical and modern works; Wansbrough in his 1977 work *Qur’anic Studies* devised a similar scheme: haggadical, halakhic, masoretic, rhetorical and allegorical. Given that most tafsīr seem to have overlapping foci and that terms such as aggada and midrash are more fluid than originally understood in rabinic literature, these divisions seem mostly arbitrary. See Saleh, *The Formation of the Classical
attested, this genre is difficult to characterize because numerous works either have never been fully studied or remain undiscovered. Nonetheless, certain works, such as those of Tabari and Ibn Kathir are regarded as the most influential in both scholarly and lay circles.\(^\text{21}\) While philology, which examined Arabic grammatical structures and the variant meanings of words based on their usage in pre-Islamic Arabic literature, played a significant role in early tafsīr collections such as Tabari’s,\(^\text{22}\) as time went on, it may have been deemed dangerous exegetical territory. Often, the meaning of a word passed down through the generations simply did not hold up to more scientific philological scrutiny. Since the received tradition privileged interpretations that supported a particular doctrinal and theological viewpoint, the findings of linguistics could be highly problematic.\(^\text{23}\) We shall see below how the work of Amina Wadud in particular revives this lost emphasis on Arabic roots and their meanings.

The tafsīr would take a different direction, moving away from its philological origins, thanks to the writings of Ibn Kathir, a fourteenth century exegete whose work remains one of the more authoritative collections of classical tafsīr.\(^\text{24}\) Following the teachings of his mentor Ibn Taymiyya, Ibn Kathir maintained that there is a methodological hierarchy for interpreting the Qur’an. First and foremost, one is to use to the Qur’an itself as a source to interpret and clarify other parts of the Qur’an. This can be done to limit the general meaning of a verse to a particular circumstance, to explain ambiguous or unfamiliar terms, or to expand on the details when the text seems terse. If the Qur’an provides little help in clarifying the text, one next turns to the sunna of the Prophet, looking at the hadith to help clarify the circumstances behind the text or the meaning of the words. After that, the traditions of the Companions would have authority in matters of interpretation, followed by the early commentaries of the Successors. In this way,

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\(^{22}\) According to Saleh, Thalabi was also skilled at incorporating both hadith and philology in his tafsīr, expertly tying the latter to prevailing Sunni doctrine, and illustrating that numerous interpretations, as long as they did not directly contradict the Qur’an of Sunna, were possible. See Saleh, Formation of the Classical Tafsīr Tradition, 77-100.

\(^{23}\) See Saleh, Formation of the Classical Tafsīr Tradition, 130-132; 144; 216-217.

\(^{24}\) See Saleh, Formation of the Classical Tafsīr Tradition, 216.
despite earlier efforts to incorporate other tools into exegesis, the received tradition would become the primary mode of interpreting scripture.

**Context as a key interpretive tool**

Several sub-genres of *tafsīr* such as *asbab al-nuzul*, or circumstances regarding revelation, and the *naskh*, or material regarding the abrogation of verses, would emerge as a means of contextualizing the revelation of the Qurʾan. While numerous classical interpreters, from Wahidi to Ibn Taymiyya, have contended that no assistance is greater in understanding the Qurʾan than the knowledge of when and in what circumstances its verses were revealed, the use of these sub-genres would be somewhat restricted in the classical period. The importance of context would be resurrected by both modernist and contemporary female interpreters, but as we shall see, there would still be limits pertaining to how widely context could be used as a hermeneutical tool.

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26 The *asbab* collections authored by Wahidi (d. 1075) and Suyuti (d. 1505) would become the most standard and most highly regarded of this genre. However, their utility as an exegetical tool is limited, as they only comment and describe the circumstance relating to a smattering of verses. Wahidi cites asbab for only 83 out of 114 suras, and while Suyuti does include occasions that pertain to all 114 suras, they only refer to individual verses and not the whole sura. See Neal Robinson, *Discovering the Qurʾan: A Contemporary Approach to a Veiled Text* (Washington, DC: Georgetown University Press, 2004), 61. Furthermore, as Rippin and Rahman have both noted, the genre is somewhat underdeveloped; often the asbab given is quite incidental and does not seem to have much direct bearing on the meaning of a particular verse. See Andrew Rippin, "The function of asbāb al-nuzūl in Qur’ānic exegesis" in *Bulletin of the School of Oriental and African Studies* 51, 1 (1988): 1–20; Fazlur Rahman, *Major Themes of the Qurʾan* (Chicago: University of Chicago, 2009), 48.

While traditional Muslim exegetes often touted the “the science of the abrogating and abrogated verses” as indispensible to any interpretive undertaking, it remained a controversial topic, since the idea that the word of God itself, any part of it, could become invalid seemingly goes against the doctrine of *ijaz*, the perfection and inimitability of the Qurʾanic text. There was no agreement on the scope of naskh, and given the controversial nature of the precept, scholars tended to reduce its occurrence: Al-Shafiʿi and al-Razi argued that the possibility of abrogation does not mean it was used, Al-Suyuti reduced abrogated verses to 20 and Shah Wali Allah of Dehli reduced them to 5. Hence, the doctrine of naskh also seems to have been of limited interpretive utility in traditional literature. See David Powers, “The Exegetical Genre Nasīkhn al-Qurʾān” in *Approaches to the History of the Interpretation of the Qurʾan* (Oxford: Claredon Press, 1988), 125; Neal Robinson, *Discovering the Qurʾan*, 67; Esack, *The Qurʾan: A User’s Guide*, 127.

27 In 1995, Egyptian scholar Nasr Hamid Abu Zayd would experience the limits of trying to read the Qurʾan contextually when his scholarship would result in a charge of apostasy being levelled against him by an Egyptian court. His argument was that the Qurʾan was a cultural product of a particular time and place which needed to be read in its original social-cultural milieu, but also that it contained a message or ‘discourse’ that could make use of modern theories of linguistics and semiotics to properly understand and apply it today. This viewpoint was not well received either in the university where he worked or among more traditionalist elements in Egypt at the time. The court’s ruling that, as an apostate, his marriage to his Muslim wife was null and void, would force the couple to flee the country. See Mona Zulficara, “Trial of Thought: Modern Inquisition in Egypt, A Case Study” in *Study of*
The Inimitability and Uncreatedness of the Qur’an

Indeed, two medieval doctrines regarding the Qur’an would greatly circumscribe the use of context in understanding its verses and would have a tremendous impact on how it is read and interpreted by believers. First is its inimitability (ijaz) and second is the fact that it is an uncreated text (ghayr makhlūq), that is to say, it has always existed and is outside history (qadim). With regard to its inimitability, traditions emphasize the uniqueness of its language, its intricate rhyme and meter, and that is incomparable to anything that previously existed in the Arabic language. The illiteracy of Muhammad is also part and parcel of this doctrine, cited as further proof that the content of the Qur’an is divine, and unlike the Torah and the Gospels, was not tampered with or altered in any way by the human deliverer of its messenger.

With regard to the Qur’an’s status as ‘uncreated’, this took centre stage during the emergence of kalam, or speculative theology, in the centuries following the Prophet’s death. One of the main theological-philosophical schools of the time, the Mutazilites, actually proposed that the Qur’an was created by God in time. They arrived at this conclusion while exploring the relationship between God and God’s attributes, including God’s speech. For the Mutazilites, the absolute unity of God was the highest principle, and since God was one, they concluded that God’s speech, that is to say, the Qur’an itself (as the embodied expression of revelation), could not be co-eternal with God as it would compromise God’s very unity. Hence, they determined that the Qur’an was created and was revealed by God in time, which would make the text subject to a historicist and contextual analysis. Rival camps, on the other hand, maintained that God and God’s speech could not be separated, that they were co-eternal with one another, hence the Qur’an was outside of time and ‘uncreated’. This theological argument is of interest to us because, as scholar Wael Hallaq has noted, the debate was not only about whether or not the Qur’an was created, but “also about the role of human reason in interpreting the divine texts.”

If the Qur’an is uncreated and co-eternal with God, then this sets considerable limits on the interpretive freedom of exegetes to use reason to interpret it. The best interpretation – and to


28 The Qur’an itself challenges its detractors to come up with a comparable text and talks of the inadequacy of any attempts at replication. This challenge is known as tahaddi. See for example Q 52:34; 11:13; 10:38; 17:88.

some extent, the only acceptable interpretation – would be the one that derives from a source closest to God, such as the Prophet himself, or reports of the Prophet’s interpretations as collected and transmitted by those closest to him. If, on the other hand, the Qur’an is created, then it is separate from God, from the source of revelation, and its creation at a specific moment in history requires negotiating, interpreting, and making a case for its continued relevance throughout time. This distance then, between God and God’s revelation, creates a need for interpreters, and the Mutazilites hoped to have a monopoly on this role. In 833 CE, they received the reigning Caliph’s support to forcefully assert the position that the Qur’an was created through a campaign of state-sponsored violence. When this campaign failed, the theological claims of the oppositional camp would prevail; Sunni dogma would hold that God and God’s attributes, including God’s speech were inseparable. Thus, to this day, the orthodox position is that the Qur’an is both eternal and uncreated. However, the fact that the text is also understood as engaging with people in history means that Qur’anic exegetes must walk a fine line, acknowledging both the Qur’an’s transcendence as well as its temporal relevance. We will see both Wadud and Barlas walking this tightrope, as they try to contextualize the Qur’an’s verses yet also claim that the essence of the Qur’an’s message is universal and ahistorical. In order to do so convincingly and eloquently, they would both appeal to the work of University of Chicago scholar, Fazlur Rahman, whose own writings were dependent on modern developments in both Western academia and the Muslim world.

Modern Approaches to the Hebrew Bible
Indeed, modernity would have a significant impact on the study of both the Torah and the Qur’an. Perhaps the most significant development in the modern study of the Hebrew Bible as far as Jewish feminist scholars are concerned was the nineteenth century emergence of a scholarly movement known as Higher Criticism which stripped the Hebrew Bible of its divine


32 For an examination of similar issues in Orthodox interpretation of the Torah, see Tamar Ross, “The Word of God Contextualized” in Expanding the Palace, 184-212.
origins. Its adherents dared to read the Bible as though it were any other text and concluded that the Torah was likely a composite text comprised of numerous different sources or documents dated to different time periods. Because much of the work done by the Higher Critics had a Christian supersessionist undertone, it would take some time until Jewish scholars would begin to incorporate it into their own work.\(^{33}\) But the creation of programs in Judaic Studies along with developments in the fields of archaeology, sociology, anthropology, and literary studies – not to mention the discovery of the Dead Sea Scrolls – would open up Biblical Studies to new methodologies and temper the influence of Higher Criticism on the discipline. Feminist scholars in particular would make use of these new tools in unprecedented ways by examining the contents of the bible against Near Eastern archaeological remains, inscriptions, and other ancient narratives in order to render women visible. Despite the historic resistance among Jewish feminist text scholars to exploring questions of theology, the writings of Christian feminist theologians such as Elizabeth Schüssler Fiorenza would be particularly influential on Jewish feminist biblical scholars.\(^{34}\) Fiorenza’s ‘hermeneutics of suspicion’ which encourages the reader to unearth and challenge the “androcentric presuppositions and patriarchal interests”\(^{35}\) at the core of biblical texts has proven to be a particularly fruitful strategy, one that even Frymer-Kensky alludes to in her work.\(^{36}\) But as Rachel Adler has noted, the centrality of the law in Judaism renders Christian feminist theological approaches somewhat inadequate.\(^{37}\) Hence,

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\(^{33}\) Traditional rabbis were understandably discomfited by these new approaches to the biblical text. Recognizing this trend as a threat to their own authority, and fearing that these new developments would hasten assimilation, more traditional rabbis, such as Samson Raphael Hirsch (1808-1888), responded to advocates of Higher Criticism as well as their Reform Jewish counterparts by revisiting interpretation of the Tanach themselves to illustrate that rabbinic interpretations were not a complete departure from the biblical text and were still equally relevant to the ethics and morality of a modern Judaism. Meanwhile, the Wissenschaft des Judentums school, a group of university-trained Jewish scholars who promoted a scientific approach to the study of Judaism, were supportive of the new scholarly-critical approach to the Hebrew Bible, but interestingly enough, did not much apply these tools themselves. In line with their rabbinic predecessors, they did not think biblical interpretation was about finding one definitive and objective reading of what the text meant at the time it was written or compiled, preferring to focus on the multiple ways it had been read in the past. See S. David Sperling, “Modern Jewish Interpretation” in The Jewish Study Bible eds. Adele Berlin and Marc Brettler (Oxford: Oxford University Press, 2004), 1909.


\(^{36}\) Frymer-Kensky, Studies in Bible and Feminist Criticism, 162; Reading the Women of the Bible, xxviii.

Jewish feminist text scholars have needed to formulate their own tools and vocabulary for speaking cogently about foundational texts and praxis. As we shall see below, this confusion of how to deal with the nomos of Judaism persists in Jewish feminist readings of Biblical texts.

**Post-colonial developments in Qur’anic Interpretation**

During the nineteenth century, the critical eye which the Bible received was similarly put to the sacred writings of Islam. Modern Western scholars would challenge traditional Muslim views regarding the compilation of the Qur’an and would re-orient the field of Qur’anic Studies so that it diverged from traditional Qur’anic sciences. According to Rahman, modern critical scholarship of the Qur’an up until the 1980’s was primarily concerned with two areas: a) comparisons of the Qur’anic text with earlier revelations in Judaism and Christianity – these treatments were and continue to be polemical in nature and b) attempts to establish the ‘true’ chronology of the Qur’anic text. Since for believers, the Qur’an’s primary purpose is to act as a ‘guide’, neither of these approaches were of particular note to Muslims.38

But Western Orientalists were not the only ones re-examining the Qur’an in this period. While many of the traditional Islamic sciences experienced neglect among traditional Muslim interpreters in the colonial period, Qur’anic study was not similarly effected. As was noted in Chapter 1, in much of the Muslim world, shari’a law at this time was replaced by European legal codes or watered down versions of one madhab’s approach to the law, and the madrasas were replaced with Western-style universities. Fiqh and Hadith studies would suffer a result, but the Qur’an would remain central and its interpretation would actually experience a revival.39

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38 Despite some alternative accounts for dating the collection of the Qur’an proffered by Western, non-Muslim academics, for believing Muslims, there is no question that the version of the Qur’an that we have in our possession today contains the whole of the revelation as it was given to Muhammad. While there are some early Shi’i traditions contending that certain verses – particularly those relating to the elevated importance of the Prophet’s family -- that were left out of the final recension of the Qur’an, and even Sunni reports maintaining that some verses were abrogated or left out of the text for a reason, both Sunnis and Shias recognize the extant text as the direct speech of God. And this is certainly true of both Amina Wadud and Asma Barlas whose work will be discussed below. See Jane McAuliffe, *Qur’anic Christians: An Analysis of Classical and Modern Exegesis* (Cambridge: Cambridge University Press, 1991),12-14; Hossein Modaressi,”Early Debates on the Integrity of the Qur’an: A Brief Survey” in *Studia Islamica* 77 (1993): 5-39.

From the late 18\textsuperscript{th} century onwards, Qur’anic translations and commentaries would proliferate and be disseminated among the laity in greater numbers. According to Ebrahim Moosa, in this cultural milieu “vibrating with scriptural teachings,”\textsuperscript{40} the power of the ulema began to wane, and new social movements and religious authority figures began to emerge. Indeed, it was in this period that modernist Pakistani writers Muhammad Iqbal and Abdul Ala Mawdudi would turn their attention to the Qur’an, as would likeminded Egyptian reformists such as Muhammad Abduh and Sayyid Qutb. While the Qur’anic commentary of both Mawdudi and Sayyid Qutb would make their way into the writings of Amina Wadud, no Islamic reformer of the 20\textsuperscript{th} century would have a greater impact on women interpreters than Fazlur Rahman. Forced to flee his native Pakistan in the 1960’s for his soft distinction between Divine Speech and that of the Prophet,\textsuperscript{41} Rahman would move to the United States where, like his predecessors, his academic focus would shift to the Qur’an, believing, “in true Protestant fashion...one could reinvent tradition by way of the scripture.”\textsuperscript{42} In this respect, Rahman was very much a product of the period in which he was writing, where the Qur’an was at the centrepiece of any social reform project, to the near exclusion of other Islamic sources.\textsuperscript{43}

While Rahman’s contributions to Qur’anic interpretation will be discussed further vis-a-vis the work of both Wadud and Barlas, his primary insights were that the Qur’an a) be understood within its proper context (of 7\textsuperscript{th} century Arabia) and b) be read as a unity, rather than in the piecemeal approach most prevalent in traditional tafsīr. For Rahman, reading the Qur’an in context and applying it to contemporary Muslim societies involves a “double movement” methodology: understanding the specific historical circumstances that occasioned the decree, determining the more general principle (the ratio legis) behind the injunction by taking the

\textsuperscript{40} Ebrahim Moosa, “Foreword” in Fazlur Rahman, \textit{Major Themes of the Qur’an} (Chicago: University of Chicago, 2009), xii.

\textsuperscript{41} Rahmain suggested that the Qur’an is “the divine response, through the Prophet’s mind to the moral and social situation of the Prophet’s Arabia, particularly the problems of the commercial Meccan society of his day” (\textit{Islam and Modernity}, 1982, 5). The divine message “broke through the consciousness of the Prophet” and thus became part of Mohammed’s speech, although the source was God. Rahman argued that the doctrine of the otherness of the Qur’an was formulated in a time when scholars lacked the sophistication to also insist that the Prophet had some role in the way the message was transmitted. See Rahman, \textit{Islam and Modernity: Transformation of an Intellectual Tradition} (Chicago: University of Chicago Press, 1982), 5; Ebrahim Moosa, “Foreward”, xi.

\textsuperscript{42} Ebrahim Moosa, “Foreward”, xii.

\textsuperscript{43} For a discussion of a similar trend in Jewish thought, see section on modernity and the Hebrew Bible above.
Qur’anic weltanschung, the cohesive, socio-moral vision of the text into account, and then re-applying it to the current context and particularizing it through a similarly in-depth examination of the present socio-moral milieu and circumstances. By taking such an approach to re-examine the Qur’anic verses pertaining to women’s testimony, polygyny, marriage and divorce, Rahman would set the stage for the female interpreters who would come after him.44

Female Scripture Scholars: Frymer-Kensky, Pardes, Wadud & Barlas

Having examined some relevant historical developments in Jewish and Islamic exegesis, we can now turn back to the work of female interpreters. It is important to note that the scholarly literature by women interpreting authoritative sources such as the Torah and Qur’an is both varied and voluminous.45 While Frymer-Kensky, Pardes, Wadud and Barlas cannot possibly capture the breadth of the scholarship in this emerging field, I have chosen them because they represent particular approaches to reading for gender and law in Jewish and Islamic texts.46 In

44 Rahman is one of the first modern scholars to draw a parallel between the Qur’an’s stance on slavery and the socio-legal status of women. Claiming that slavery was so embedded in the culture that it was “impossible to legislate it a way in one stroke,” Rahman notes the Qur’an’s gradual move towards emancipation of slaves and asserts that polygyny and other social inequities between men and women were permissible but restricted because the society was expected to move towards a higher moral ideal. He argues that the advantages given to men in the Qur’an with regard to inheritance, testimony, marriage and divorce were purely due to a man’s functional role as provider, and not arising from a notion of inherent superiority. See Rahman, Major Themes of the Qur’an, 48-49.

45 Several Jewish and Muslim male scholars have also contributed to this vast and relatively new field of scholarship which explores sex and gender in classical religious texts. In Jewish Studies, these include Daniel Boyarin, David Biale, Howard Eilberg-Schwartz, and Michael Satlow, and in Islamic Studies some of the more notable figures are Khaled Abou El-Fadl and Farid Esack. Although some of these scholars have been extremely influential and have even informed the work of the women under discussion, their valuable contributions will not be explored in depth in this study, as I am primarily interested in examining the scholarly approaches and interfaith encounters of Jewish and Muslim women. While I am neither advocating an essentialist notion of women, nor that, by virtue of their very femaleness, female scholars would have access to hidden tropes in the texts previously undiscovered and/or ignored, I am curious to discover what their added value to the field of hermeneutics might be, given that exegesis has been dominated and controlled by men from its outset. Since many of these texts explicitly sought to exclude women, I hope to investigate how this sense of dislocation in relation to texts might affect women’s reading practices.

46 A complete list is not possible here, but other noteworthy Jewish feminist text-scholars include Carol Myers (Hebrew Bible), Esther Fuchs (Hebrew Bible), Tal Ilan (Rabbinic Literature, Judith Romney Wegner (Talmud), Charlotte FonRobert (Rabbinic Literature), and Rachel Adler (discussed in Chapter 4 in detail). While the work of Judith Plaskow has been instrumental to the field of Jewish feminist theology, because she is not primarily a text scholar, her writings will be used primarily as contrast case. Likewise, Tamar Ross’ work deals directly with questions of halakha and approaches to halakhic reform, but because she does not offer exegeses of texts, she will not be dealt with in detail. Other Muslim feminists/scholar activists include Rifaat Hasan (Qur’an), Nimat Hafez Barazangi (Qur’an), Fatima Mernissi (Hadith -- discussed in Chapter 3 in detail), Omaima Abou Bakr (Hadith), Mai Yamani (Islamic Law), Amira Sonbol (Islamic Law) and Kecia Ali (discussed Chapter 3 in detail). Again, the work
many instances, the genre of classical literature they have chosen to work with is as significant as the hermeneutical method employed, as it indicates which texts can be, in the interpreter’s mind, salvaged or redeployed for feminist and egalitarian purposes. Although they are all text-scholars, as we shall see, their relationship to the law and treatment of it is inconsistent.

As was already mentioned, both traditional interpretive methods as well as critical academic tools are visibly at play in the work of Tikva Frymer Kensky, Ilana Pardes, Amina Wadud and Asma Barlas. Although their primary methodologies and their influences seem significantly different, they do, at times employ similar strategies, particularly when it comes to rejecting earlier interpretive work and exonerating the text for not upending patriarchy entirely. I will begin then by laying out the reading strategies of the four women interpreters, and then following some criteria set out by Asma Barlas herself, I will examine each scholar in terms of her relationship with the following:

- divinity of the text;
- patriarchy;
- other classical texts;
- religious law; and
- feminist theory.

As we shall see, these five areas are where points of overlap and departure in the exegeses of Jewish and Muslim women scholars are brought into sharpest focus.

**Method: Frymer-Kensky**

Tikva Frymer-Kensky is a Biblicist and Assyriologist. Her background in modern biblical scholarship as well as Near Eastern history, literature and languages have a direct bearing on how she reads the biblical text. In the introduction to *Reading the Women of the Bible*, Frymer-Kensky describes, in detail, her multiple-pronged approach to deciphering the meaning of scripture. For her, it starts with a close reading of the text by making use of classic philological techniques, comparing translations of words, paying attention to grammar and rhetoric, and...
“…stripping the story of the layers of interpretive midrash that have been incorporated in it.”

She advocates checking at the door both traditional interpretations as well as ones’ own biases and assumptions regarding the written texts. Next, she recommends looking beyond the actual words to examine the literary structure of the text. This might involve rhetorical criticism, literary analysis and narratology to understand the craft behind the narrative, or higher criticism to reveal the traces of variant traditions and multiple authors who may have had a hand in compiling the same text. Intertextual allusions are also examined. By noting the repetition of key words and phrases or similarities in structure between texts, Frymer-Kensky suggests, one is able to discover how biblical authors intentionally meant for one narrative to echo and evoke memories of another in the mind of the reader. In this way, connections between texts are revealed and the deeper ideological or theological message of the text can be made more transparent.

**Method: Pardes**

Like Frymer-Kensky, Ilana Pardes primarily explores Biblical materials. However, as a scholar of comparative literature, her approach is somewhat different. Her work largely focuses on biblical narratives to reveal the heterogeneity in biblical treatment of women and images of the feminine. Her work reacts against two distinct trends in feminist biblical scholarship: one that seeks “an idyllic reconciliation between ‘biblical faith and women’s liberation’”, and inadvertently turns the Bible into a “feminist manifesto” and the other, that focuses exclusively on the Bible’s patriarchal representations of women. Walking a middle path, Pardes looks for indications of patriarchal discourses in the texts, while at the same time, revealing traces of counter narratives, which challenge the Bible’s predominant attitude towards the feminine.

One prominent feature that her work does share with Frymer-Kensky is an indebtedness to the findings of Higher Criticism, the nineteenth century scholarly movement that concluded that the Hebrew Bible was likely a composite text comprised of numerous different sources or documents dated to different time periods. Although Pardes appreciates the work of these early

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scholars for demystifying the Hebrew Bible, stripping it of its divine origins, and helping to reveal the competing ideologies at work within it, she objects to their atomistic treatment of the text, for failing to note the craftsmanship and cohesion involved in its final form, and for their complete blindness towards aspects of gender. Following Bakhitin’s observations about the heterogeneity of language itself, that at any point in time, it reflects the accumulation of contradictory viewpoints through the ages, Pardes posits that the Bible is far more heteroglot than the proponents of Higher Criticism ever dreamed. To better discern these multiple layers within the text, she utilizes an interdisciplinary approach, drawing on feminist theory, literary criticism, biblical scholarship, and psychoanalytic theory.

**Comparative Frameworks and Multi-disciplinary Tools**

While several of the interpretive techniques Frymer-Kensky utilizes are not uncommon among contemporary biblical interpreters, as noted above, perhaps her most unique contribution to feminist biblical scholarship in particular is her in-depth knowledge of the Near Eastern milieu in which the Hebrew Bible emerged. After thoroughly examining the language and literary context of a biblical narrative or legal text, Frymer-Kensky looks to Mesopotamian articulations of similar concepts to see if the ancient Israelites simply adopted an existing law, term or category from their neighbours, or instead chose to modify certain concepts and practices. Such comparisons bring into sharper focus innovations in Israelite ideology and make clearer how they were attempting to define themselves against their neighbours.

For instance, the mistreatment of Hagar by Sarah has spawned several essays by feminist exegetes and theologians, disturbed that Sarah’s callousness towards a lower-status, foreign-born handmaiden seems to be justified and defended in the biblical text. Citing the Laws of Hammurabi, a Babylonian legal code dated to 1790 BCE, and evidence from other Assyrian texts, Frymer-Kensky suggests that Sarah’s actions, while perhaps appearing unjust to a contemporary audience, would have been in keeping with the law of the times. Not only did the Hammurabi Code allow a woman to give her female slave to her husband for the purpose of bearing children, but it indicated that if the slave, after bearing a child, attempted to claim equal status with the prime wife, she could not be sold, but could be demoted back to the status of slave. An Old Assyrian text goes even further in this regard, allowing the slave-woman to be
sent away, even after she has borne children. Accordingly, by examining the Genesis story against the backdrop of Assyrian and Babylonian laws of adoption and succession, Sarah’s harsh behaviour is normalized. While it may still seem unacceptable to modern-day readers, it is nonetheless rendered contextually unexceptional.

Although Pardes’ work on other Near Eastern civilizations is not as extensive as Frymer-Kensky’s, she uses her knowledge of contemporaneous myths from other cultures to identify “the ways in which antithetical female voices intermingle with other repressed elements of the Bible.” These other repressed elements include polytheistic currents as well as alternative views of covenant, sexuality and desire. For her, Exodus 4:24-26, also known as the Bridegroom of Blood text, is the prototypical example of these alternate and unconscious motifs at work. In Pardes’ adept interpretive hands, the story of Zipporah circumcising her son and saving Moses from Yahweh’s murderous wrath becomes an echo of the Egyptian myth of Isis and Osiris, with Zipporah playing the role of the mother goddess who bests a male deity and saves both her husband and son in the process. By analyzing this quizzical biblical narrative in light of both polytheistic myths and the findings of psychoanalytic theory, Pardes contends that this rewriting of the tale in a monotheistic context reveals the Israelites “underlying desire for a maternal representative in the divine sphere.” Tikva Frymer-Kensky also briefly alludes to the ways that psychoanalytic theory might illuminate the unconscious motives of the biblical narrators. Indeed, in discussing the unlikely prominence of women in biblical narrative she remarks, “whether these are echoes of the mantic rites of the goddesses or reflections of the psychological attachment to the mother, we cannot say.” However, in Pardes’ writings, deep-seated drives and longings are given a new prominence as a way of explaining biblical motifs.

Following the convention in feminist theory, both Frymer-Kensky and Pardes employ an arsenal of interdisciplinary tools in their reading of traditional texts. By contrast, Wadud and Barlas

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49 As Frymer-Kensky points out, the Laws of Hammurabi also grant ‘first-born status’ to any future offspring that the prime wife many have. See Frymer-Kensky, *Studies in Bible and Feminist Criticism*, 230-235.


53 Frymer-Kensky, *Studies in Bible and Feminist Criticism*, 82.
liberally engage with contemporary hermeneutical theory, the work of other Islamic Studies scholars, and look to Islamic history to provide contextual clues, but they both contend that the best tool for deciphering the Qur'an is the Qur'an itself.

**Method: Wadud**

A vocal African American convert to Islam, Amina Wadud’s area of focus is Qur'anic Studies, although she has background in both Arabic and Near Eastern Studies from the University of Michigan. Her work *Qur’an and Woman*, first published in 1992, was a groundbreaking text for its time. In it, Wadud posited a) that centuries of Islamic exegesis were incomplete because they had not taken a female perspective into account and b) that a new Qur’anic hermeneutic, one that is inclusive of the female voice and female experience is an essential element in achieving gender justice in both Islamic thought and praxis. The book caused a sensation and has been translated into numerous languages (including Indonesian, Turkish, and partially into Arabic), and is now used in several courses in Western universities. Although her scholarship has clearly had a wide sphere of influence, it was perhaps her role in leading mixed-gender *jumu’ah* (Friday prayer) services in both South Africa (1994) and New York (2005) that would catapult her on to the international stage. While her activism is seemingly unrelated to her hermeneutic, one cannot help but note a change in her mode of reading between the publication of her first book and her second, *Inside the Gender Jihad*. In the fourteen year lapse between the two works, she found that she could no longer sustain an “ivory tower approach” grounding her research in theory and theology alone.  

So it seems that after wading into the messy sphere of “social praxis and Muslim women’s lives,” Wadud found a need to adjust her methodology. Consequently these two approaches will be treated in turn.

**Qur’an and Woman**

In *Qur’an and Woman*, Wadud maintains that any hermeneutical model must take into account a) the text’s context b) its grammatical structure (how it says what it says) and c) its overall

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55 Idem.
Wadud’s focus on the text’s context, grammar and worldview are, in fact, interrelated, as it is by paying close attention to the text’s language, structure and syntax as well as how the universals and particulars may be related that the text’s worldview is revealed. Wadud undertakes a close reading of the text as a holistic unit, challenging, as did Rahman before her, the verse-by-verse, atomistic approach of earlier Muslim scholars that either ignored or deemed irrelevant the thematic unity of the text. Wadud refers to this mode of reading the text for wholeness as a “hermeneutic of tawḥīd,” invoking the unity and uniqueness of Allah, a recurrent Qur’anic concept she identifies as integral to its thematic weltanschunng.

Wadud’s pivotal understanding of context vis-a-vis the Qur’an also owes a debt to Rahman, as it is predicated on his double movement theory described above, namely, that there are universal ideas that need to be teased out of the particulars of the text by reading it first in its original context of seventh century Arabia to determine the principle, or ratio legis, behind the text, and then adapting that principle to fit one’s contemporary context. Accordingly, she suggests that seventh century particulars should be restricted to that context unless a case can be made that there are broader lessons to learn from them. An example of this aspect of her hermeneutic at work can be found in her discussion of the hurī, the fair-skinned, female virgins promised to the pious in the afterlife. With regard to the Qur’an’s usage of such culturally-specific notions of beauty to entice people, Wadud explains that,

although the perspective of the seventh-century desert people were given significant consideration in the Qur’an’s mode of expression, its eternal message is not limited to

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56 Although, what the worldview of a text is seems entirely dependent on the reader, who has his/her own vested interest in emphasizing certain components of text.

57 Wadud, Qur’an and Woman, xii. .

58 In her insistence on recognizing the interconnectedness of the whole Qur’anic text, Wadud is not unlike Pardes who also saw more unity and craftsmanship in the biblical text than earlier biblical scholars had considered. Barlas too, as we shall see, insists that the Qur’an should not be read in a piecemeal fashion, postulating that the text itself promotes intratextual interpretation and argues against the splitting apart of its verses. See Barlas, Believing Woman, 15, where she cites Q 15:91-93 as a prooftext.

59 A similar idea in terms of Jewish sources can be found in the work of Eliezer Berkovits and Judith Antonelli. Building on the ideas of Maimonides, both of these scholars understand the Torah as teleology, as building toward the perfection of society. Hence they differentiate between principles that are “Torah-true” and “Torah-tolerated.” See Berkovitz, Jewish Women in Time and Torah (Newark, NJ: Ktav Publishing Inc., 1990) and Antonelli, In the Image of God: A Feminist Commentary on the Torah (Northvale, NJ: Jason Aronson Inc., 1997).
any single form of articulation...readers from varying contexts must determine how those particulars are relevant to their own lives.⁶⁰

To illustrate that, even within the Qurʾan, such a depiction is time-limited, she notes that references to the huri vanish after the Meccan period, a time when the Qurʾan “spoke primarily to an audience of prominent patriarchs in a patriarchal society”,⁶¹ only to be replaced in the Medinan suras by the more universal and gender-neutral term ‘zawj’ to represent one’s eternal companion.⁶²

Continuity with and Departure from Classical Tafsīr

Wadud’s invocation of the differences between the Meccan and Medinan periods certainly have their roots in classical tafsīr as does her emphasis on Arabic philology, grammar and syntax to decode the text. Most notably, her employment of “tafsīr al-Qurʾan bi al-Qurʾan”, or using one part of the Qurʾan to interpret another, is perhaps the most tell-tale sign of her engagement with the received tradition.⁶³ However, her focus on and in-depth analysis of all the Qurʾanic verses that refer to women (both separately and together with men), sets her commentary apart from these earlier exegetical contributions which were generated “without the participation and

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⁶⁰ Wadud, Qurʾan and Woman, 53. By the publication of Inside the Gender Jihad, we can see Wadud has taken a markedly different approach to the huri concept. Acknowledging that several Qurʾanic passages are directed towards male sexual desires, she bitterly observes, “even after they are dead, men’s pleasure should not be forsaken!” See Inside the Gender Jihad, 193.

⁶¹ Ibid, 54. Interestingly this observation that the Meccan sura reveals a particularized approach and the Medinan a more universal understanding challenges Mohamed Taha’s popular contention that the Meccan suras tend to reveal universal ideals, while the Medinan ones, which promulgate specific laws to a particular community of believers should be understood as more time-limited. While Taha was executed in Sudan for suggesting – in contrast to the orthodox position -- that content from the later phase of revelation was meant to temporarily replace rather than entirely abrogate more universal Meccan ideals, his student Abdullahi An’Naim, would take his approach to a new level by proposing that returning to Meccan-period ideals, which displayed less discrimination against women and non-Muslims, should serve as the basis of legal reform in modern Islamic societies. See Abdullahi An’Naim, Islam and the Secular State: Negotiating the Future of Shari’a (Cambridge, MA: Harvard University Press, 2008), 135-137. While Wadud believes searching for general principles over particulars is a hermeneutic key, and that dividing along the Meccan/Medinan faultline would certainly make it easier to undo a lot of problematic legislation, she finds Taha’s theory oversimplifies the content of the message in each period. See Wadud, Qurʾan and Woman, 30.

⁶² Wadud goes to great lengths to illustrate the gender-inclusive nature of the word zawj, contrary to traditional interpretations. See Qurʾan and Woman, 20 and 54-57. She will revisit the huri in Inside the Gender Jihad, with far less tolerance for the male sexual proclivities it seems to enshrine and validate. See Inside the Gender Jihad, 193.

firsthand representation of women.”64 Referring to her own work as an example of “gender-inclusive tafsīr,”65 she is conversant in her text with the commentaries of tafsīr luminaries such as Maududi, Sayd Qutb, and Zamakhasri, and although she offers no explanation as to why she would single out these particular commentators, she indicates clearly where her own analysis of the text departs from theirs. 66 Notably, with its philological emphasis, her reading actually has striking similarities with that of Frymer-Kensky, in that she pays attention to what the Qur’an says, how it says it, and what is left unsaid, as well as exploring in greater detail trilateral roots (characteristic of both Hebrew and Arabic), textual ambiguities, hierarchies of meaning and what has been missed or ignored by earlier classical commentators.

Wadud is perhaps best known for applying her philological acumen to the highly problematic Q 4:34, a verse traditionally interpreted as putting men in charge of [qawwammuna ala] women since they are preferred [faddala] by Allah, while simultaneously demanding that wives be obedient [qanitat], and allowing men to deal with the disobedient ones [those who engage in nushuz] by cautioning, sexually isolating and scourging [daraba] them.67 Revisiting each of these Arabic terms one by one, Wadud suggests that both qiwamah and faddala68 are related and

64 Wadud, Qur’an and Woman, 2.
65 Wadud, Qur’an and Woman, xii.
66 While Maududi and Qutb are two of the more popular interpreters of the modern period, Wadud may have chosen to highlight the work of Zamakhshari (d. 1144) because of his emphasis on linguistics. Still, I find it remarkable that no rhyme or reason was provided for her choice of interpreters. For places where she notes differences between her own readings and those of these earlier exegetes, see Wadud, Qur’an and Woman, 37-38; 43; 71; 72; 75.
67 This verse has been tackled by virtually every contemporary women scholar working in the field of Islamic Studies today. Sa’diyya Shaikh’s treatment of the verse will be explored in detail in the next chapter, and the approach of Fatima Mernissi will also be referenced (see Chapter 3, 43, note 138). Other influential attempts have included Riffat Hasan’s re-defining daraba as ‘to hold in confinement’, and Laleh Bakhtiar’s insistence that it means ‘to go away’. See Riffat Hasan, “An Islamic Perspective” in Women, Religion, and Sexuality: Studies on the Impact of Religious Teachings on Women, ed. Jeanne Becher (Philadelphia, PA: Trinity Press, 1991), 112; 121; Laleh Bakhtiar, “Preface” in The Sublime Qur’an, trans. Laleh Bakhtiar (Chicago, IL: Kazi Publications, 2007), xi; also http://www.sublimeQur’an.org/ (accessed 11 February 2012) . For a different approach, somewhat akin to that of Barlas below, which employs the hermeneutics of Ibn al-Arabi to suggest that God intends all possible meanings, but it is the community’s burden to enact the most ethical ones, see Laury Silvers, “In the Book We Have Left Out Nothing: The Ethical Problem in the Existence of Verse 4:34 in the Qur’an” in Comparative Islamic Studies 2, 2 (2006): 171-180. For a more detailed examination of other contemporary approaches to Q 4:34, see Ayesha Chaudhry, Domestic Violence and the Islamic Tradition: Ethics, Law and the Muslim Discourse on Gender (Oxford University Press, forthcoming).
68 She explains that the specific area where men are ‘preferred’ over women is in matters of inheritance, where they receive a greater portion and relates this to the verse’s allusion to spending of one’s property. See Wadud, Qur’an and Woman, 70.
limited to a man’s obligation to provide materially for his family,\textsuperscript{69} that qanitat throughout the Qur’an pertains to both sexes and is related to obedience to Allah alone, and that daraba can mean ‘to set an example’ rather than ‘strike’.\textsuperscript{70} She insists that in the larger Qur’anic context of verses that ban female infanticide and Prophetic traditions that condemn wife-beating, this verse should be understood as restricting unchecked violence against women rather than condoning it. In Qur’an and Women, Wadud seems satisfied with this analysis and confidently asserts that any man who strikes his wife “cannot [after the fact] refer to 4:34 to justify his action,”\textsuperscript{71} since he clearly means harm, and the goal of Q 4:34 is to help couples attain marital harmony. However, as we shall see, in her later work, she concludes that her earlier analysis of this verse simply did not go far enough.

**Inside the Gender Jihad**

In her most recent text, Wadud develops a more fully articulated understanding of the cooperative relationship between divine revelation and human agency in the interpretive process. She does so by building on Khaled Abou El Fadl’s notion of a “conscientious pause”, in which a believer issues a time-out on a particular Qur’anic injunction and instead undertakes a careful examination of it because, by the standards of the time, it no longer seem to fit with God’s overall message. As Wadud explains, Abou El Fadl’s pause relies on the notion that there are numerous paths to the knowledge of God that are extra-textual – vehicles such as prayer, supplication, meditation on God’s creation, currents in history, etc. – that work together with the indicators of the text to help make sense of the divine message. If one’s conviction about the divine gleaned from these extra-textual sources does not jive with certain textual indicators, then a re-examination of the text is in order.

Accordingly, after having grappled with 4:34 for nearly two decades, Wadud acknowledges that her initial hermeneutical approach may have been somewhat apologetic. Taking up Abou El Fadl’s suggestion, Wadud revisits verse 4:34 to illustrate that, at times, the literal implementation

\textsuperscript{69} She understands this as emblematic of a certain mutuality of obligations between men and women, with women being charged with child-bearing and rearing and men assuming the duty of material provisions. See ibid. 73-74.

\textsuperscript{70} Wadud contrasts this form of the Arabic word with that of darraba, which connotes repeated and excessive striking. See, ibid., 76.

\textsuperscript{71} Wadud, Qur’an and Woman, 76.
of a passage must be rejected.  She notes a historical trajectory in the way the verse has been treated in the tradition, with each successive interpretive community trying to limits its scope. Following her earlier reliance on Rahman’s double movement theory, she re-contextualizes the verse in light of three discrete periods of time: 1) at the time of the Prophet, who, according to one tradition “wanted one thing and Allah another”\(^\text{72}\) when this verse was revealed, and notably never engages in the behaviour made permissible by the verse, even when his wives were in full “nushuz” territory\(^\text{73}\); 2) in the context of the jurists who moved to restrict any physical disciplining of wives by rendering a strike that causes harm as impermissible;\(^\text{74}\) and 3) in her own 20\(^{th}\) century context, when she chose to open up the semantic field of “daraba” to indicate that violence need not be the only interpretive possibility. But she concedes that even her own attempt at exegesis was circumscribed: “there is no getting around this one...I simply cannot condone permission for a man to ‘scourge’ or apply any kind of strike to a woman.”\(^\text{75}\) Concluding that, “how the text says what it says is just plain inadequate or unacceptable, however much interpretation is enacted upon it,” Wadud opts to say “no” to Q 4:34, citing current understandings of domestic violence and women’s experiences of it as Abou El Fadl’s ‘extra-textual indicators’ that work in conjunction with her conception of the divine text.\(^\text{76}\) She understands her ‘no’ not as an outright rejection of the text, but as a textual intervention, in line with the trajectory of interpretation that has gone on through the ages. She suggests that the human community creates textual meaning based on human development, and that given what we now know, any attempt to apply the verse literally violates notions of justice and human dignity, “other principles of the text itself...as Allah has led humankind to understand today.”\(^\text{77}\) Interestingly enough, although she earlier maintained, like Rahman before her, that the Qur’an


\(^{73}\) Indeed, the Qur’an and numerous hadith record instances of the Prophet’s wives ‘rebelling’ against him. See Q 66:3-5; Sahih al-Bukhārī 6:60:438; 6:60:436; 7:62:119.

\(^{74}\) Interestingly enough, and perhaps reinforcing my point about scripture scholars and their reluctance to engage directly with legal sources, Wadud does not provide a specific fiqh source here. For a source that reviews this juristic position, see for example, Tuffahah, “Hukm al-ta’ dib al-zawjah bi al-darb fi al-fiqh al-islami al-muqaran”, Majallat Jami’at Malik Saud, 2003, 16:1, p.71

\(^{75}\) Wadud, Inside the Gender Jihad, 200.

\(^{76}\) Wadud, Inside the Gender Jihad, 192.

\(^{77}\) Wadud, Inside the Gender Jihad, 203.
itself is steeped in principles of “social justice and human equality,” here we note a subtle shift in her understanding in that she now suggests that humans were guided by Allah to understand these principles in the text at this point in time.

As we shall see, Asma Barlas shares many of Amina Wadud’s earlier ideas, but strongly departs with her strategy of saying ‘no’ to the text. In Barlas’ 2009 paper “Muslim Women’s Rights: Frameworks and Interpretations” presented at a conference on gender equality in Indonesia, she claims that “progressive Muslims” are no different from secularists, since the former identify the Qur’an as a patriarchal document and seem to believe that the only way to achieve gender justice in Islam is by moving beyond or saying ‘no’ to the Qur’anic text. While she lumps together the likes of Farid Esack, Ebrahim Moosa, and Kecia Ali and accuses them of refusing to engage in liberatory readings of the Qur’an, strangely, she stops short of citing Wadud herself, the scholar most closely associated with the idea of “no” as a textual intervention. Perhaps this omission is merely an acknowledgement of how much Barlas owes to the pioneering work of her exegetical predecessor.

Method: Asma Barlas

A scholar in the field of International Politics with a varied background as a journalist and diplomat, Barlas understands her own hermeneutic as building on that of Wadud, and, undeniably, there are many similarities in their respective approaches. Like Wadud, Barlas laments the fact that the Qur’an has been replaced with a particular reading of it, so she strives to

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78 Wadud, Qur’an and Woman, xxii. For Rahman’s position on this, see Major Themes of the Qur’an, where he speaks of the Qur’an’s “goal of an ethical, egalitarian social order” (41) or emphasizes that the, “essence of all human rights is the equality of the entire human race, which the Qur’an assumed, affirmed and confirmed. It obliterated all distinctions among men except goodness and virtue (taqwa)” (45).

79 This interpretive approach is similar to the hermeneutical strategy suggested by Tamar Ross. See Expanding the Palace of Torah, 197-224.

80 Abdulahi an-Naim and Ziba Mir Hosseini are also lumped together with this group for their failure to differentiate between the shari’a and fiqh, since they believe they are equally a product of human interpretation. See ‘Muslim Women’s Rights,” 2009, 2.

81 Barlas explicitly refers to her work as being in dialogue with both Wadud and Leila Ahmed. See Asma Barlas, ‘Believing Women’ in Islam: Unreading Patriarchal Interpretations of the Qur’an (Austin, TX: University of Texas Press, 2002), 212, note 17. She also includes in her own work many of Wadud’s Qur’anic interpretations as they relate to motherhood (175), nushuz and wife-beating (186-188), and polygyny (191).
recover what she calls the “egalitarian aspects of Qur’anic epistemology.”82 While Wadud speaks of the inescapability of one’s ‘prior text,’ – the history, language, socio-political status and culture into through which one understands the world – as a factor in one’s reading practices, Barlas talks of the “pre-understanding” that we all, including traditional mufaseerin, or Qur’anic interpreters, bring to the interpretive process, with both scholars acknowledging that multiple readings of the Qur’an are possible, and their own interpretations are simply one more alternative.83

While Barlas also engages in a close reading of the text, is attentive to its silences, and occasionally queries the meaning of a particular word, she does not share Wadud’s passion for Arabic philology and grammar, perhaps because her experience of the Qur’an is primarily in translation84 and she believes that the Qur’an is “real and knowable in all languages.”85 As Barlas points out, it is not the Arabic of the text itself that makes it ‘divine’ speech, and how one

82 Barlas, Believing Women, 5.
83 See Wadud, Qur’an and Woman, 5; Barlas, Believing Women, 5. Despite its polysemy, Wadud asserts there is enough convergence in readings over time to set limits on what could be deemed acceptable, and Barlas argues that certain meanings are already embedded in the text and can be accessed by anyone if the ‘right’ method is employed (21). She shares this notion of a ‘correct’ reading with Rahman, see Islam and Modernity, 1. Barlas likewise sets limits on interpretation through her invocation of reading for “the best meanings” (15) This will be discussed further below.
84 See Barlas, Believing Women, 23.
85 Barlas, ibid., 215, note 60. Although the presence of more English-speaking Muslims in the field of Islamic Studies has resulted in more and more scholarly work being produced in English, Arabic still retains a unique status in the sub-field of Qur’anic Studies, as the original language of the text. The primacy of Arabic also holds among Muslim lay practitioners, who may read the Qur’an in translation for comprehension, but will still recite it in the original Arabic. As a result of these factors, Barlas has been the target of much scholarly and popular criticism for her use of English translations of the Qur’an and secondary sources to make her points about the inadequacy of classical Qur’anic interpretation, rather than engaging directly with the Arabic text herself. See for example. Kristin Zahra Sands, “Book Review: “Believing Women” in Islam: Unreading Patriarchal Interpretations of the Qur’an by Asma Barlas” in International Journal of Middle Eastern Studies, 35, 4 (2003): 635-636; and Julianne Hammer, “Identity, Authority, and Activism: American Muslim Women Approach the Qur’an” in The Muslim World 98 (2008): 451-452. Despite Barlas’ lack of fluency in Arabic, I feel she makes a unique contribution to Qur’anic exegesis because of her three-fold focus on a) applying modern hermeneutical theories to a divine text; b) deconstructing patriarchy vis-a-vis the Qur’an; and c) exposing how other texts and contexts influence Qur’anic interpretation. Although I could have contrasted Wadud’s work with that of Nimat Hafez Barazangi, another female scholar who has done exegetical work on the Qur’an and who is fluent in Arabic, I feel that Barlas’ work builds on the foundation laid by Wadud and takes the conversation a step further in a way that that Barazangi does not. Barazangi’s work is less about a new gender-sensitive reading of the Qur’an, than about incorporating Qur’anic precepts into one’s ‘self-identity’ as a Muslim woman, but the process of assimilating the text into one’s identity is not sufficiently fleshed out. See Nimat Hafez Barazangi, Women’s Identity and the Qur’an: A New Reading (Gainesville, FL: University Press of Florida, 2004).
interprets the Qur’an “depends not so much on one’s mastery of Arabic as on one’s hermeneutics, epistemology, sexual politics, and theology.”

Rather than focusing on language, she prefers to examine how parts of the text work together as a whole. Accordingly, Barlas follows Wadud in adopting Fazlur Rahman’s textual holism approach (engaging with the text’s running themes rather than undertaking a line-by-line analysis of verses), as well as his double movement theory, which she refers to as “reading behind and in front of the text” to distil the Qur’an’s key principles and re-contextualize them in terms of the present.

But in addition to sharing similar reading strategies with her precursor, Barlas engages Wadud’s work directly by making more explicit some of the underlying assumptions with which Wadud was working. In particular, Barlas probes more deeply the implications of a divinely revealed text, defines patriarchy in specific terms and examines the content of the Qur’an against this definition. Plus, she describes the process whereby later commentaries came to be linked to the Prophet himself, and essentially elevated these commentaries over revelation itself.

Consequently, Barlas’ hermeneutic, and the lens through which she makes sense of the text, is reliant on her conception of the following three ideas: Divine Self-Disclosure (the Qur’an’s “auto-hermeneutic”\(^9\)), patriarchy, and the Qur’an’s relationship with other texts. Each of these ideas will be examined further below.

### Schematic Review of Exegetical Methods

So to review, Frymer-Kensky’s approach is characterized by a close look at the literary and grammatical structure of the Biblical material, paying close attention to repeated words and motifs and other inter-textual allusions. She shares this attentiveness to language and structure with Wadud whose approach focuses on the Qur’an’s context, the grammar of the text as well as the text’s worldview. While Frymer-Kensky uses other Near Eastern writings as a frame of

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\(^{87}\) Barlas, *Believing Women*, 22.


\(^{89}\) Barlas, *Believing Women*, 205.
comparison with the Biblical text, Wadud suggests that the Qurʾan is its own best interpreter. Still, both women, as we shall see, are engaged with – and often interpret against – the classical traditions of midrash and tafsīr.⁹⁰

Although she is not as well-versed in Assyrian law and mythology, Pardes shares with Frymer-Kensky an interest in revealing motifs inherited from the Bible’s Near Eastern context. Both Hebrew Bible scholars are also attuned to findings of Higher Criticism and accordingly look for layers in the text. While they also both employ literary analyses and feminist theory in their interpretations, Pardes puts a much greater emphasis on psychoanalytic theory and revealing the polytheistic and counter-hegemonic currents embedded in the text. She departs from conventional source criticism in that she understands the text’s final form as more cohesive than the early higher critics allowed.

With its emphasis on the cohesion of scriptures, Pardes’ work has parallels with both Wadud and Barlas, who follow Fazlur Rahman in reading the Qurʾan holistically and emphasizing the text’s thematic unity – a significant departure from the approach of traditional Muslim exegetes who preferred to dissect the text line by line. They also both champion Rahman’s double movement theory, which encourages discerning and applying the text’s original rationale to a new context. Although Barlas does occasionally query the received tradition about the meaning of a word, she is less interested in philology and grammar than her colleague Wadud. However, Barlas goes further in examining and making transparent the contexts in which interpretation occurs and illustrates how those contexts and conditions have a direct impact on the interpretations themselves.

Interestingly enough, whether knowingly or not,⁹¹ all four women scholars are in conversation with common feminist hermeneutical techniques identified by Christian feminist scholar Phyllis Trible in that they:

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⁹⁰ A surprising interest in midrash will be noted in the writings of Pardes below. Barlas, as we shall see, holds the tafsīr responsible for sexist interpretations that have infiltrated their way into Islamic thought.

⁹¹ Frymer-Kensky and Pardes directly engage with Trible’s work, as noted earlier. While she does not come up in the writings of either Wadud or Barlas, given her influence over the field, it would be unusual if they were not at least familiar with her landmark article on how to do feminist hermeneutics in Biblical Studies.
a) look for non-sexist themes or themes that seem to reject sexism; and

b) undertake new exegesis of scriptural passages by rereading/re-translating passages relevant to the conception of male and female.⁹²

While Frymer-Kensky and Pardes employ both these strategies in their respective works, we will note that the Muslim women exegetes tend to make more use of re-reading and re-translating, since, as we shall see below, they make claims that the Qur’an itself rejects sexism.

Having examined the strategies that each scholar says she uses when approaching scriptural texts, we will now probe some of the other ideas and assumptions undergirding their understandings of these texts. These elements are not always made explicit in their writings, but they certainly have just as much of an impact on their reading practices. Barlas names these influences in a way that the other scholars do not, so we will be using her conception of the divine, of patriarchy and of the inter-relationship of authoritative texts as a point of departure for this study.

**Divinity of the Text: Wadud and Barlas as ‘Believing Women’**

While methodological training guides the scholar in the reading of texts, as Asma Barlas correctly points out, “readings of Scriptures are as likely to be influenced by theological considerations, especially one’s conception of God.”⁹³ Consequently, one cannot ignore this element in analyzing the present cadre of scriptural exegetes. Wadud tells us that she reads the Qur’an, “as a believer, I accept certain aspects of Islam as sacred: the Qur’an is the word of Allah.”⁹⁴ Barlas, similarly, reads the text as a “believing woman” who does not question the Qur’an’s “ontological status as Divine Speech.”⁹⁵ However, while Wadud, at first, puts the Qur’an itself, as the word of God, to work in its own decipherment by using its contingent and

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⁹⁴ Wadud, *Qur’an and Woman*, xvii.

contiguous parts to decipher the whole, she later actually de-emphasizes literal readings based on what she refers to as “mundane”\textsuperscript{96} examples of divine self-disclosure. Although she continues to posit that the Qur’an is divine speech, she later asserts that the Qur’an is merely a window into God, that divine disclosure expressed in the fallible medium of human language can never fully explicate God’s message, hence it needs to be examined in conjunction with other extra-textual indicators.\textsuperscript{97} So while God is unequivocally the source of the text for Wadud, in her later writings, God is not necessarily the source of the interpretive process.

Barlas, on the other hand, embraces a certain degree of textual literalism and goes so far as to make the text’s status as Divine Speech a primary hermeneutical device. Following Rahman, she understands tawḥīd, God’s unity, as a primary organizational principle in the Qur’an, hence God and God’s speech are ontologically equivalent.\textsuperscript{98} Accordingly, Barlas believes that it is important to make God’s self-disclosure, as it occurs in the Qur’anic text, the hermeneutical site from which to read the Qur’an. For Barlas, focusing on these moments of self-disclosure in the Qur’anic text allows the reader to establish authorial intent, thereby unlocking the text’s hermeneutical keys that would yield the most liberatory readings.\textsuperscript{99} For her, three of the most salient traits of Divine Disclosure are God’s indivisibility, justness, and incomparability, all of which, preclude the possibility of using God’s speech to justify human oppression or elevate human males to the level of divinity.\textsuperscript{100} She also emphasizes the Qur’an’s own insistence on reading it holistically, reading for best meanings and using analytical reason in its interpretation.\textsuperscript{101} That she is so conclusive about both the ability to discern God’s nature from

\textsuperscript{96} Wadud, Inside the Gender Jihad, 190.

\textsuperscript{97} See pg 23 above. While she starts out regarding the Qur’an as the source of any program of Islamic reform, she seems to suggest here that Qur’anic interpretation is somewhat of a futile effort as we can never know God’s intention, certainly not from the text alone. She seems to suggest that law is a useful starting off point for beginning these discussions.

\textsuperscript{98} Barlas, Believing Women, 13. For this idea in classical kalam, see Ignaz Goldziher, Introduction to Islamic Theology and Law, 94-96.

\textsuperscript{99} See Barlas, Believing Women, 21. This is in contrast to the view of for example, Mohammed Arkoun who believes that the ‘sender’ of the Qur’an, is beyond the field of scientific inquiry. See Re-thinking Islam, 27.

\textsuperscript{100} See Barlas, Believing Women, 13-15. It is interesting that she focuses on these three traits, not so much because they are the most important, but as she says, “because I have not yet explored others.” See pg. 214, note 46.

\textsuperscript{101} As prooftexts for this three-fold approach, she cites verses warning people not to break the Qur’an into parts (Q 15:91-93; 6:91; 5:44), encouraging them to find the best interpretation (Q 39:18; 3:7), and reflect on what they are
the text as well as the precise meaning of its verses seems unusual given the Qur’an’s own warning that some of its verses are clear and others more obscure.\textsuperscript{102} While Barlas seems to suggest that the ‘clear’ verses are self-evident, she fails to acknowledge that disentangling the clear from the more obscure verses has been a pre-occupation and source of debate among Muslim exegetes from the time of Tabari, if not earlier.\textsuperscript{103}

**Jewish Feminist Exegetes and God**

While the divine is central to the readings employed by Wadud and Barlas, for Frymer-Kensky and Pardes, God has little to do with it. As already explained above, both read the Torah as a work compiled and edited by humans. For Pardes, the biblical text is a thoroughly “demystified” one.\textsuperscript{104} God appears as a central character in the text, as a projection of human desires and anxieties, but not as its author.\textsuperscript{105}

Like Barlas, Frymer-Kensky agrees that scriptures should be read for their best, most liberatory meanings. Biblical texts, she tells us, are terse, and “much is left to the reader to fill in and interpret. What one adds to the stories will determine whether the stories will be liberating or oppressive.” She sees the stories as a “moral challenge” for the interpretive community, which must choose to read them “for a blessing rather than a curse.”\textsuperscript{106} However, the extent to which God is actually present in the text, directing those readings, is less clear to Frymer-Kensky.

For Frymer-Kensky, the practice of Judaism is grounded in halakha. We shall return to this focus in her writings below, but for now, it is interesting to note the conceptual disconnect between God and halakha in her work. While halakha is often synonymous with law in Jewish writings,
Frymer-Kensky observes that it is linguistically related to the Akkadian word *alaktu* meaning ‘God’s way.’ Yet, as she notes, this immediacy of God as the source of revelation and communal praxis has been lost over time, particularly, in the Conservative movement, with which Frymer-Kensky was most closely affiliated. She critiques her denomination’s wishy-washy restatement of Judaism’s foundational narrative by presenting it as follows:

Once, a long time ago, certainly much more than 5751 years ago, God created the world. Later God maybe brought some people out of slavery who met up with other people who came to Sinai where something happened which the people interpreted as God speaking. The people wrote this revelation down as laws because that is how they understood it... Today, we do not know the actual commands of God; we only know that neither the texts that we have now nor the laws that we base upon them contain the actual statements of our divine Commander. Nevertheless, we are obligated to obey them.

The Sinaitic revelation may or may not have happened, but either way, one cannot understand the text itself as the product of God. So why bother to follow it? Explaining that obedience of the laws is not a logical outcome of such a narrative, Frymer-Kensky attempts to rewrite it herself, and present a more integrated understanding of halakha. “Halakha is our way of acting in concert to reach God,” she asserts, but the doubts regarding the divinity of the biblical text linger, as she describes the Torah as a written document which reflects our “ancestors’ attempt to approach divinity.” So while she seems to acknowledge the existence of a divine being, the relationship that being has to the text she is interpreting is murky to say the least. Either way, God has little to no bearing on how she reads the Hebrew Bible.

**On Patriarchy**

While the role that theological claims play in the reading strategies of the female scriptural exegetes under discussion is somewhat complicated, their respective understandings of patriarchy and how it may influence the relevant texts are much more straightforward. While

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107 Frymer-Kensky’s husband is a congregational rabbi in a Conservative synagogue. Her own commitment to Conservative Judaism is evidenced in her article “Halacha, Law and Feminism” in *Studies in Feminist Biblical Criticism*, 255-262, where she heralds the Conservative movement’s more fluid conception of halakha as an antidote to the androcentric vision of classical halakha critiqued in Judith Plaskow’s writings.


both Frymer-Kensky and Pardes acknowledge that both biblical society and the biblical text are patriarchal, Wadud and Barlas suggest that only the society being addressed by the Qur’an is suffused with patriarchy.

**Barlas: The Qur’an is not Responsible for Patriarchal Readings of It**

Working against the claim that Islam is an overtly misogynistic tradition, one of the primary goals of Barlas’ work is to illustrate that patriarchal readings of the Qur’an are not inevitable, and that the text itself is not responsible for the patriarchal modes in which it has been read. In order to demonstrate that the Qur’an itself actually undermines notions of patriarchy, she takes the seemingly radical step of defining the term and then measures the Qur’anic evidence against this analytical framework. Barlas defines patriarchy in two ways: a) as rule by fathers, where fathers ruled over both wives and children and male heads of households were not so subtly equated with God-the-father; and b) as an ideology that privileges males and ascribes “social/sexual inequalities to biology.”

She asserts that “the Qur’an was revealed in/to an existing patriarchy and has been interpreted by adherents of patriarchies ever since” but argues that it does not in fact endorse this position, since God is neither represented as a Father in the text nor are human fathers described as ruling over their families. Arguing that the notion of tawḥīd, God’s unity, makes it theologically impossible for any human male to be likened to God, Barlas illustrates the way the Qur’an specifically critiques Jews and Christians for their figurative attributions of God as a father, son or husband, and demonstrates how the rights of fathers are continually undermined in the text, with God actually displacing the traditional role of the family patriarch.

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110 She notes that no female interpreter of the Qur’an, including Wadud, has actually defined what she means by ‘patriarchy’. See Barlas, *Believing Women*, 11. However, Wadud, borrowing from Maria Riley’s work *Transforming Feminism* does define it as “a culture built on a structure of domination and subordination...which demands hierarchy.” See Wadud, *Qur’an and Woman*, 80.


114 See Q 5:20.

115 See for example, Q 19:42-43 where Abraham rejects the authority of his idol-worshipping father or Q 31:14-15 where the children of non-believers are expressly enjoined to disobey their parents.
Finding that the Qur’an’s worldview does not map onto the first, more narrow conception of patriarchy, Barlas further argues that the Qur’an does not traffic in gender dualisms, maintains that there are no ontological differences between men and women in the Qur’an, and that their fitra, or nature, is understood as equivalent, since both sexes were created from a single nafs, or soul, and both were equally charged with the duty of khilafah, or vice-gerency over the earth. While the text recognizes that there are biological differences between men and women, it does not ascribe to them a notion of sexual/social hierarchy. She maintains that differential treatment in arenas such as marriage, divorce, testimony, etc. is not tantamount to unequal treatment, but rather they each have different rights and social duties. So while spouses are understood as having similar natures, on a social plane, men are charged with being the material providers of women, while the life-giving potential of women as mothers is assigned greater value than that of fathers. As for verses pertaining to polygyny, adultery, divorce, and wife-beating which are generally read as privileging men, Barlas sees the first three examples as attempts to protect the rights of women, and suggests that daraba in Q 4:34 has been rendered so ambiguous by Muslim women scholars that “we should be willing to rethink our commitment to its centrality in our own understanding of the Qur’an’s teachings.” Finally she concludes that the model of gender complementarity presented in the Qur’an was not only progressive for 7th century Arabia, but that it has equal relevance for a Western/feminist worldview, as a gender framework that rejects the hierarchy of the sexes. Although in her later essays, as we shall see, Barlas will refine this position, in her book, she presents a shockingly uniform view of feminism as devaluing heterosexual marriage, childbearing, and monotheism. As a result, she argues that Qur’anic teachings about the complementarity of men and women are a comforting alternative to those who object to the “feminist assault on biology and attempt to delink reproduction and sexuality.”

116 Barlas, Believing Women, 183.
117 Barlas, Believing Women, 5.
118 Barlas suggests that a cumulative reading of the Qur’an illustrates that these provisions were not intended to be read timelessly, but does not provide a means for determining which principles are timeless and which are not. See Believing Women, 199.
119 Barlas, Believing Women, 189.
120 Barlas, Believing Women, 202. For more on Barlas’ opposition to feminism, see below.
Wadud and Patriarchy: Context is Everything

While Barlas maintains that the Qur’anic recipe for gender relations has equal application today, Wadud suggests that certain components of the revelation were meant to be confined to patriarchal context of seventh century Arabia. She explains that the Qur’an, through its chronological progression, sets out guidelines for believers, but to “restrict future communities to the social shortcomings of any single community” would limit the guidance the text has to offer. She finds recourse in Rahman’s ratio legis principle, that it is necessary to determine the spirit behind the text itself, unencumbered by the androcentric particularities of the culture in which it was revealed. Quoting Rahman, she reiterates his somewhat naive assertion that even when the principle behind a precept is not made explicit, “it is not difficult to guess it,” which, were it so simple, should have quelled centuries of debate between scholars! Accordingly, she notes that while marriages of subjugation were “the norm for Muslims and non-Muslims at the time of the revelation... [the Qur’an] applies constraints on the actions of husbands with regard to wives,” which is indicative of its recommended program of gradual reform. Defining patriarchy as “a culture built on a structure of domination and subordination...which demands hierarchy,” she suggests that despite the different functional roles assigned to men and women in the Qur’an, these roles were not set in stone. Like Barlas, she similarly suggests that “there is no inherent value placed on man or woman...the Qur’an does not strictly delineate [gender roles]... to propose only a single possibility for each gender.” Again, following Rahman’s lead, she finds that taqwa, or God-consciousness, is the primary way the Qur’an distinguishes between individuals, so from the perspective of the Qur’an’s ethico-moral perspective, women and men were entirely equal.

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122 For more on the elusiveness of the ratio legis behind Qur’anic principles, see Hallaq’s discussion on qiyas, or analogous reasoning, in *The Origins and Evolution of Islamic Law*, 141.
123 See Wadud, *Qur’an and Woman*, 78-82.
124 See Wadud, *Qur’an and Woman*, 80.
125 See Wadud, *Qur’an and Woman*, 63
Theological vs. Socio-Legal Discourse

So while Wadud and Barlas distinguish the scriptural message from the contextual medium in which it was revealed, the lines between the two are more blurred for Frymer-Kensky and Pardes. Frymer-Kensky acknowledges that biblical society was indeed a patriarchy: she describes a culture in which men are clearly privileged: both lineage and land were dependent on male descendents, male heads of households functioned like monarchs, and although a wife may have considerable economic power in her household, her husband was the “king of the castle,” who could assert his dominance whenever he wished. Nonetheless, similar to Wadud and Barlas, she insists that women are not portrayed either as “other” or as possessing distinctively “feminine” qualities in the biblical system. As she explains, “the role of women is clearly subordinate, but the Hebrew Bible does not ‘explain’ or justify this subordination by portraying women as different or inferior.” For her, biblical women are portrayed as fundamentally having the same flawed motives and human desires as biblical men. So while female figures such as Rebecca, Rachel and Leah may use deception and bargaining to get what they want (i.e., a secure future for a favourite son, more intimacy with a spouse, or a cure for barrenness), Frymer-Kensky demonstrates that biblical males such as Abraham, Isaac and Jacob are just as likely to dissemble to achieve their goals (i.e., protecting themselves from jealous monarchs, or stealing their brother’s birthright).

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127 Frymer-Kensky contends that the familiar Western notions of “feminine wiles”, “the battle between the sexes,” “sisterly solidarity,” and “sex as weapon,” are all absent as are any discussions of the nature of women. See Frymer-Kensky, In the Wake of the Goddesses, 120-121; Reading the Women of the Bible, xv-xvii. However, the recurrent image of the “foreign woman” in particular as temptress throughout the biblical canon, especially in Proverbs, Kings, Judges would seem to undermine this position. For more on the foreign woman paradigm in biblical writings, see Claudia Camp, Wise, Strange and Holy: The Strange Woman and the Making of the Bible (Sheffield: Sheffield Academic Press, 2000).

128 Frymer-Kensky, Reading the Women of the Bible, xv.

129 See Genesis 27:5-17.

130 See Genesis 30:14-16.

131 Idem.

132 See Genesis 17 and 26.

133 See Genesis 25:29-34.

134 See Frymer-Kensky, Reading Women of the Bible, xv.
Like Barlas and Wadud, Frymer-Kensky seems to approach the category of woman in scripture along two distinct planes: the theological as compared to the functional, or socio-legal. So while the ‘nature’ of women or their capacity for piety (or deception and disbelief) is equivalent to that of men, the law, which governs social relations, is not as gender blind. Although theology and law have always been intertwined in Jewish and Islamic thought, by delinking them, these women scholars are able to redeem the Torah and Qur’an as liberatory to women, but increasingly render the law as problematic. We shall explore this tendency further in the work of Wadud, Barlas and even Pardes below, but, since the law still has a prominent place in Frymer-Kensky’s writings, she must somehow absolve it of its patriarchal orientation.

**Frymer-Kensky: Biblical Law is Patriarchal, but it is not the Bible’s Fault**

Much feminist ink has been spilled over the unequal definition of adultery espoused by the bible, since it limits the transgression to having sexual relations with a married or betrothed woman, leaving married men to freely engage in licit intercourse with as many unattached women as they would like. While Frymer-Kensky acknowledges the double-standard, she suggests that “this was not an unusual definition of adultery…possibly it demonstrates a desire to be certain of paternity. Within Israel this treatment of adultery is not examined: it is part of Israel’s inheritance from the ancient Near East.” Putting the biblical conception of adultery in a larger Near Eastern context does seem to let the ancient Israelite authors off the hook to some extent. They didn’t create the legal definition of an adulterer; they simply didn’t tamper with what their forbearers had established. So while Biblical law and culture do emphasize the need to take care of those who are less privileged, according to Frymer-Kensky, the text does not interrogate the existence of inequality itself, leaving the gap between masters and slaves, rich and poor, men and women intact.

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137 Frymer-Kensky, *Studies in Bible and Feminist Criticism*, pg. 242. Although elsewhere, she indicates that in other cultures, paternity was determined not so much by biology as by the father that raised the child. See Frymer-Kensky, “Virginity in the Bible” in *Gender and Law in the Hebrew Bible and Ancient Near East* eds. Victor H. Matthews, Bernard Malcolm Levinson, and Tikva Frymer-Kensky (London: Sheffield Academic Press, 1998), 81

138 Frymer-Kensky, *In the Wake of the Goddess*, 120.
This observation, that the Israelites did not invent inequality or patriarchy, but simply inherited it from the cultures around them, is precisely the same argument that Barlas makes with regard to pre-Islamic Arabia. While Barlas uses the claim to demonstrate the more progressive attitude ushered in by Islam, Frymer-Kensky makes the point to undermine the prevalent misconception that, prior to the advent of monotheism, there existed a more egalitarian, goddess-centred culture in the Near East. But while shifting the responsibility for patriarchy to the Mesopotamians allows Frymer-Kensky to neutralize many common feminist critiques of biblical law, culture, and Judaism more generally, she does not address why the compilers of the Bible would reject some Mesopotamian ideas, while reifying others. Similarly, she maintains that it is not until the Book of Ecclesiastes, a rather late text in the biblical canon, which contains the infamous rant, “I find women more bitter than death,” that we see outright misogyny being conveyed in Israelite society. Frymer-Kensky attributes this shift in attitude to the influence of Greco-Roman culture, an influence that would, to her mind, shape much of the rabbinic conception of women and gender. In her analysis then, anything that might smack of gender discrimination or subordination of women is either a Mesopotamian or Greco-Roman inheritance. In this way, biblical law and culture is vindicated of much that might seem troublesome for the 21st century reader.

Tamar Ross calls this trend among feminist exegetes “sociological revisionism”. Such an approach insists that sexist ideas are not endemic to the religion, but are the result of “sociological factors that have more to do with the cultural context in which the religion developed than with any of its inherent principles.” Although Ross is referring to the

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139 See Barlas, Believing Women, 169.


141 Ecclesiastes 7:26

142 Ross’ divides the mode of restorativism further into historical restorativism and exegetical restorativism, with the first group unearthing long-forgotten women-centred or more egalitarian practices in ancient and classical texts, while the latter group tries to re-read these same texts without the influence of thousands of years of patriarchal interpretation. Ross’ categories are far too neat, as most feminist exegetes attempt to both make women and their practices more visible in traditional texts while also trying to re-read with a fresh perspective passages that have
writings of Jewish feminist scholars, the description seems applicable to the hermeneutics of Wadud and Barlas as well. Ross undercuts the distinction between the legal and theological treatment of women which allows these scholars to claim that scriptures promote a certain degree of gender blindness. She asserts that, in the Bible in particular, women’s role is “mainly biological… Women’s status is established by social criteria rather than by considerations of holiness, and women appear in biblical law as a subdivision of humanity, rather than as members of the main class.”

**Pardes: Law is Patriarchy**

Nowhere is the linkage between law, patriarchy and the subsequent ‘othering’ of women, more apparent than in the writings of Pardes. Unlike Frymer-Kensky, she is less invested in exonerating the biblical text for its patriarchal leanings. As she readily admits, “the dominant thrust of the Bible is patriarchal;” however, she sees it as her task to uncover the ways in which the patriarchal trend is subverted in the text. Although Pardes does focus primarily on biblical narrative, discussion of the law does make an appearance in her writings. But while biblical narrative is heteroglot for her, law seems to be synonymous with a sort of monolithic patriarchy.

This conflation of law and patriarchy is most evident in Pardes’ analysis of the Song of Songs. Pardes refers collectively to the hostile male groups in the narrative – the brothers, the “watchmen” and “the keepers of the walls” – as “the guardians of the Law” who wish to keep the Shulamith, the female lover in the story, chaste and virginal. Interestingly enough, this explanation is, as she herself points out, consistent with the rabbinic interpretation of the text, which understands the “keepers of the walls” to mean the “keepers of the walls of the Torah.” But while she does make a compelling case that in the unveiling of the Shulamith by the keepers long been understood as subordinating women. Still, her observation that these approaches are left somewhat wanting is helpful in thinking through the exegetical trends employed by both Jewish and Muslim women scholars.

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143 Ross, *Expanding the Palace of Torah*, 126.

144 Pardes, *Countertraditions*, 51.

145 Pardes, *Countertraditions*, 133.

146 Pardes, *Countertraditions*, 142.
of the walls there are symbolic allusions to the levitical laws against illicit sex, (aka “uncovering one’s nakedness”), there are, in fact, no explicit legal prescriptions to speak of in the Song. This and the glaring absence of God in the text is precisely what, for centuries, has mystified biblical exegetes looking for ways to explain the erotic Song’s inclusion in the biblical canon. Nevertheless, this legal and theological deficiency does not stop Pardes from insisting that “the Song simultaneously challenges the Law and accepts it, reveals and conceals its otherness.” It seems then that “Law” is simply code for “patriarchal restrictions” or the “patriarchal need to control women’s bodies and women’s sexuality” in her lexicon. While Israelite laws pertaining to women are certainly borne out of a patriarchal culture, to make the law in its entirety identical with patriarchy belies the complexity of the Israelite legal system and its development over time. Furthermore, while Pardes’ larger thesis insists that biblical stories have embedded within them multiple approaches to the feminine, and that consciously or not, the biblical canon-makers preserved these diverse approaches, when it comes to law, she seems to suggest that this polysemy disappears; for Pardes, the entity that is ‘the Law’ seems uniformly to privilege males.

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147 Pardes compares the levitical prescriptions governing appropriate sexual relations to the episodes in Hosea and Ezekiel where an idol-worshiping Israel is compared to a whoring wife who is shamed by her husband through her public unveiling. This is then further linked to the Song of Songs where the Shulamith’s brothers seemingly try to unveil her to punish her for her dalliances with her lover. See Pardes, *Countertraditions*, 132-137.

148 Pardes, *Countertraditions*, 135. See also *Countertraditions*, 9 for another instance of where law functions as synecdoche for ‘repressive male authority’ in Pardes’ writings. There she analyzes the episode in Numbers 12 when Miriam is struck with leprosy. She describes both Aaron and Miriam as “rebels” for challenging the authority of their brother Moses, but the fact that Aaron is spared and only Miriam is punished for this transgression, leads Pardes to muse that, “the Law has even less sympathy for oppositional female voices.” This is an unusual turn of phrase given that no specific ‘law’ is tied to this narrative either here or elsewhere in the Hebrew Bible. Whether she intends for law to connote God, the Torah itself, or the bible’s all-male redactors, the diverse approaches she reads into biblical narrative seems absent in her conception of law as male privilege and authority.

149 Pardes, *Countertraditions*, 143. See also *Countertraditions*, 9 for another instance of where law functions as synecdoche for ‘repressive male authority’ in Pardes’ writings. There she analyzes the episode in Numbers 12 when Miriam is struck with leprosy. She describes both Aaron and Miriam as “rebels” for challenging the authority of their brother Moses, but the fact that Aaron is spared and only Miriam is punished for this transgression, leads Pardes to muse that, “the Law has even less sympathy for oppositional female voices.” This is an unusual turn of phrase given that no specific ‘law’ is tied to this narrative either here or elsewhere in the Hebrew Bible. Whether she intends for law to connote God, the Torah itself, or the bible’s all-male redactors, the diverse approaches she reads into biblical narrative seems absent in her conception of law as male privilege and authority.

150 According to Gerda Lerner, in its wider sense, patriarchy refers to “the institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general. It implies that men hold power in all the important institutions of society and that women are deprived of access to such power. It does not imply that women are either totally powerless or totally deprived of rights, influence and resources.” See Lerner, *The Creation of Patriarchy*, (Oxford: Oxford University Press, 1986), 239. According to this definition then, biblical law would indeed be an expression of patriarchy; although women are not completely powerless, it is clearly the males that hold all official positions of leadership. Nonetheless, by Pardes’ own admission, the biblical text contains strands of anti-patriarchal traditions, whether consciously or not. If this is true of biblical narratives, why could the same not be said of biblical law?
The Law and Other Post-revelatory Texts

Closely related to one’s understanding of the role and importance of law in the tradition is the way a scholar regards the later textual sources, the midrash and tafsīr, as well as the Talmud, Hadith, halakhic codes and fiqh manuals, which more explicitly elaborate on and apply the legislation promulgated in the foundational documents. Most of the women seem to start out with a strained relationship both with post-biblical/post-Qur’anic interpretive texts as well as the law that emerges out of them, but as we shall see, none of them are able to break entirely free of these later textual developments.

Barlas: ‘Inauthenticity’ of Extra-Qur’anic Sources

As a work that advocates new approaches to reading the Qur’an, Barlas’ whole project is invested in the need to “disentangle the Qur’an from its tafsīr.”\textsuperscript{151} To illustrate why the Qur’an has predominately been read in non-liberatory ways until now, she spends two whole chapters deconstructing traditional modes of reading, how different Islamic texts were understood in relation to one another, and the extra-textual contexts which drove and favoured certain hermeneutical approaches over others. She makes it clear that from her perspective the Qur’an itself is “the primary arbiter of its own meanings,” and that extra-Qur’anic sources, including the Hadith and tafsīr, need to be subjected to “critical scrutiny”\textsuperscript{152}. Indeed, she faults the tafsīr, Hadith and shari‘a\textsuperscript{153} for the “textualization of misogyny”\textsuperscript{154} and “legalization of sexual inequality”\textsuperscript{155} in Islam.

According to Barlas, the problem lies in the hybridity of these sources as well as the way they were employed by interpreters and jurists. While tafsīr was originally meant to help clarify the Qur’an in diverse socio-historical and cultural contexts, its contents were eventually regarded as ahistorical, and the tafsīr began to be confused with the text itself. She accuses the israiliyyat

\textsuperscript{151} Barlas, Believing Women, 62.
\textsuperscript{152} Barlas, Believing Women, 37.
\textsuperscript{153} Although she is later critical of others for conflating shari‘a and fiqh (see note 81 above), she herself uses the term ‘shari‘a’ throughout her book when referring to laws developed by Muslim jurists.
\textsuperscript{154} Barlas, Believing Women, 9.
\textsuperscript{155} Barlas, Believing Women, 4.
traditions in particular of introducing into the tafsīr material that depicts women as irrational.  

Similarly, she argues that the recorded hadith are not an accurate reflection of the Prophet’s praxis, but rather “a repository of many pre-Islamic ideas...existing practices, especially of the Arabs” and that by equating the Prophet’s Sunna with the Hadith, many misogynistic notions were given an Islamic stamp of approval. Barlas attributes blame to the ninth century jurist al-Shafi’i for elevating the status of the Hadith, so that when contradictions arose between the Qur’an and the Hadith, the Hadith was actually found to trump the revealed text. She notes that once the jurists and traditionists had agreed upon and invested authority in the Hadith as reflective of the authentic Sunna of the Prophet, ijmā’ (consensus) and ijtihād (independent reasoning), which had operated in unison as sources of the law, essentially became irrelevant. Thereafter, legal interpretation would primarily defer to the Hadith as the quintessential Prophetic tafsīr of the Qur’an, the ultimate way of making sense of scriptures. Although in theory, Barlas explains, every generation is free to exercise its own ijmā’, in a tradition that looks to its earliest generations as exemplars, there is a not-so-subtle preference for continuity with the past, both in terms of methodology and results.

156 Barlas, Believing Women, 40. Interestingly enough, among the six traditions which she cites as being most insulting to women’s rationality, none explicitly derive from the israiliyat. See ibid., 45.

157 Barlas, Believing Women, 65.

158 See Barlas, Believing Women, 44. Barlas’ claim here is not entirely accurate with regard to al-Shafi’i himself. Although he was certainly responsible for establishing the documented hadith as an accurate reflection of the Prophetic Sunna and as the second-most reliable source of law after the Qur’an, he was of the opinion that the Sunna could never abrogate the Qur’an. [Bernard Weiss explains the untenable nature of this position – see Studies in Islamic Legal Theory, (Leiden: Brill, 2002), 87.] Nevertheless, al-Shafi’i did elevate the status of the Sunna by likewise opining that the Qur’an could not abrogate the Sunna, since this too was the will of God as mediated through the Prophet. In essence then, the Sunna was ‘non-recited revelation’. Hence, according to al-Shafi’i, any contradictions between the Qur’an and the Sunna was illusory; the Sunna merely comes to explain, supplement or particularize the Qur’an. See Hallaq, History of Islamic Legal Theories, 25. Still, other juridical schools, such as that of the Hanafis, did explicitly contend that the Sunna, or at least the mutawatir, or recurrent, hadith, could abrogate the Qur’an. See ibid.,73 and Kecia Ali and Oliver Leaman, eds., Islam: The Key Concepts (New York: Routledge, 2008),136.

159 Her argument regarding the ‘inauthenticity’ of Islamic law as it has been practised also notes the way the Islamic state historically conspired to promote one legal approach over another, and how, even today, the governments of Muslim-majority countries can continue to assert their hegemonic control of legal meaning through means such as state-controlled media, censorship and apostasy laws. See Barlas, Believing Women, 88-89.

160 Barlas, Believing Women, 78.
Allure of the Sunna

While she herself privileges the self-sufficiency of the Qur’an in interpretation, she acknowledges that few reformist approaches advocate “the wholesale rejection of the ahadith since that would result also in abandoning the Sunnah.” Indeed, her own precedent for a woman’s critical reading of the Qur’an derives from a hadith in which one of the Prophet’s wives wonders aloud why the majority of the revelation seemed to be addressed to men alone. As the tradition explains, this critique occasioned the revelation of Qur’anic verse 33:35, which, in clunky, gender-inflected Arabic, goes out of its way to include both believing men and believing women in Allah’s divine plan. So Barlas herself cannot escape the allure of the Hadith as an interpretive tool for contextualizing the revelation. Recognizing the importance of the life of the Prophet as the best form of Qur’anic exegesis, she suggests that the Sunna, the ‘real’ sunna of the Prophet, can be extracted from the Hadith by taking a historical-critical approach to the material. Although she provides no real sense of how this might actually be accomplished, she does acknowledge the resistance that any historicization of Islamic sources would receive from more conservative Muslim scholars.

Overhauling Shari’ah

In terms of the role of law in her exegesis, Barlas asserts that the shari’ah as it developed departed from the Qur’an’s teachings on women. While she maintains that the Qur’an itself is not a law book, she concedes that legal principles must be derived from it. She holds that new exegesis is needed to revisit the purpose and intent behind Qur’anic verses, as per Rahman, thereby deriving new juridical principles in order to reframe shari’ah. Indeed, she calls for an overhauling of the entire Islamic legal framework, contending in her later work that “without

161 Barlas, Believing Women, 49.

162 See Barlas, Believing Women, 20. Interestingly enough, Barlas cites Fatima Mernissi’s The Veil and the Male Elite as her source. See Barlas, Believing Women, 215, note 57. Mernissi herself cites Umm Salama as the narrator of this tradition and uses Tabari’s tafsīr as her source. See Fatima Mernissi, The Veil and the Male Elite, 206, note 15, 218; see also, Muhammad ibn Jarir al-Tabari, Tafsīr, jami’ al-bayan ‘an ta’wil ayi al-Qur’an, vol. 22 (Beirut: Dar al-Fikr, 1984), 10.

163 Barlas, Believing Women, 49.

164 See Barlas, Believing Women, 32.

165 Barlas, Believing Women, 73.
reforming fiqh there is no prospect for achieving gender equality from within the Islamic legal system."\textsuperscript{166} So it seems that both the Sunna and fiqh are not irrelevant for her as a practising Muslim, but as sources of law, due to the way they developed in historical Muslim communities, they simply cannot be relied upon in their present ‘inauthentic’ forms.\textsuperscript{167}

**Wadud’s Choice of Text: Why the Qur’an?**

Unlike Barlas, who dismisses traditional tafsīr outright as being comprised of pre-Islamic/foreign ideas, Wadud does directly engage with the work of classical exegetes in *Qur’an and Woman*, seeing her work as continuing in methodologies of earlier exegetes. Nonetheless, her goal, as we have seen, was also to part ways with tradition by examining the text “unfettered by centuries of historical androcentric reading and Arabo-Islamic predilections.”\textsuperscript{168} Like Barlas, she laments the fact that later works of Islamic scholars became confused with the Qur’an itself and the outpouring of commentary began to overshadow the primary text. She believes these interpretations held women back and that, had the Qur’anic vision of women been properly implemented, it would have been “a global motivating force for women’s empowerment.”\textsuperscript{169}

When asked why she only focuses on the Qur’an and not the Sunna, she retorts that her text is not about Islam and women but the Qur’an and the concept of women, which is an appropriate area of study on its own. But she also speaks to her own privileging of the Qur’an over the Sunna. While she recognizes the unique role of the Prophet in terms of the revelation of the Qur’an and his Sunna as the basis of the formulation of Islamic law, she also – in accordance with the orthodox position, as she hastens to add — regards the Qur’an as infallible as compared to the hadith literature which has never been viewed as having the same degree of certitude.

\\textsuperscript{166}See Barlas, “Islamic Reform and Gender Equality: Fiqh, Feminism and CEDAW”, 2009, 3.

\textsuperscript{167}Interestingly enough, Barlas’ suspicion of the Hadith sounds much like that of the Western scholars such as Goldziher, whom she does quote frequently on the topic. However, unlike some of her Western, Orientalist counterparts, she does not probe whether the received account of how the Qur’an came to be compiled is reliable. For a discussion of this same trend among Western scholars who undermine the authority of hadith, yet revert to insider Islamic accounts of the authenticity of the Qur’an, see Harold Motzki, “The Collection of the Qur’an: A Reconsideration of Western Views in the Light of Recent Methodological Developments” in *Der Islam* 78,1 (2001):1-34.

\textsuperscript{168}Wadud, *Qur’an and Woman*, ix.

\textsuperscript{169}Wadud, *Qur’an and Woman*, xxi.
Where there are contradictions between the Hadith and the Qur’an, especially vis-a-vis the equality of women, she clearly sides with the Qur’an.

**Wadud’s About-face: Embracing Islamic Law**

So while her position on the status of the Qur’an as compared to other texts is clear, her understanding of Qur’anic law and later developments in Islamic law is less so in her initial writings. Like Rahman before her, Wadud does appeal to the ‘spirit’ of the Qur’an and insists that the gender-specific particulars of 7th century Arabia were not meant to be universally applied. Accordingly, she calls for every Muslim interpretive community to reinterpret and reapply the principles of the divine text in their own context. But while she notes that the ‘natural evolution in society’ implicit in the Qur’an has led to further legal and social reform on gender issues in some Muslim majority countries, she does not weigh in on whether or not these reforms can be supported by the much touted and ‘easily guessed’ *ratio legis* of the Qur’anic verses dealing with gender.

Given that Wadud’s initial motivation for re-reading the Qur’an was to determine whether or not the status of Muslim women in Muslim cultures was reflective of Islamic ideals as they are portrayed in the sacred text, *Qur’an and Woman* contains surprisingly few references to Islamic law and praxis. 170 Indeed, in *Inside the Gender Jihad*, as was already noted, she explains that her early work focused on Qur’anic interpretation and was really restricted to questions of Islamic theology, but she later realized that, “alternative interpretation of the Qur’an from a female-inclusive perspective is by itself insufficient to bring about all gender reforms necessary for the multiple dimensions of Muslim men and women’s lives.” 171 But although she has backed away from a complete reliance on the Qur’an as the source of communal transformation, she has not given up on textual interpretation entirely. She asserts it is necessary for women to invest in reinterpretation of sources, particularly the shari’a, in order to properly participate in discussions on Muslim political reform, and suggests that her methodology for re-reading the Qur’an can be equally applied to the shari’a. 172 And given her non-literal reading of divine discourse in her

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170 Wadud, *Qur’an and Woman*, ix.
171 Wadud, *Inside the Gender Jihad*, 188.
172 Although she enters into a discussion of the difference between shari’a, as ‘immutable divine order’ and fiqh as a human endeavour elsewhere in the text, she uses the terms inconsistently herself. On the differences see *Inside the
later work, that the message of Allah cannot be contained by a single text, the direct role of the Qur’an as literally applied law is further interrupted and downplayed in her writings. But human articulations of divine legislation, on the other hand, are given a new prominence. As she asserts, “we cannot rewrite the Qur’an...[but] we can rewrite the law....by rewriting the legal codes, through distinguishing their sexist reflection, we can achieve an Islamic reality more meaningfully reflecting Qur’anic principles in a harmonious equilibrium.” Since it is easier to change the law than it is to change the words of the Qur’an, the law, which is within the purview of humankind, must be changed. While she does caution that Qur’anic ethical-theological principles should undergird discussions of Islamic family law reform over and above secular human rights discourses, we see the way fiqh, is now privileged over the Qur’an by Wadud as the more malleable and accessible Islamic tool for improving the on-the-ground status of Muslim women.

Frymer-Kensky: “One Cannot Remove Law from the Rest of a Culture’s Ideas”
Although like Barlas and Wadud, Frymer-Kensky begins her reading of the biblical text trying to peel away the traces of midrashic and other extra-textual influences in order to see in the text what has been rendered invisible over the centuries, she is also interested in the genesis of ideas and institutions, so she is very likely to track the development of an interpretation in the midrash and other post-biblical writings, noting where her own understanding parts ways with more established meanings. Yet she is just as likely to appeal to rabbinic commentary to help underscore her own point, whether to reinforce the centrality of women in early re-tellings of the

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Gender Jihad, 48-50 and compare this with her own usage of shari’a, which she sometimes qualifies as ‘historical shariah’ on pgs. 7, 147, 152, etc.

173 See pg 50 above.

174 Wadud, Inside the Gender Jihad, 204-205.

175 Wadud, Inside the Gender Jihad, 48.

176 See pg 50 above.

177 See for example her interpretation of the phrase “between her legs” in Judges 5:27. Although most midrashim interpreted Sisera falling between Yael’s legs after she kills him to be an allusion to sexual intercourse, Frymer-Kensky, noting all the allusions to motherhood in the song, understands it more as referring to a grotesque inversion of childbirth. See Reading the Women of the Bible, 52-53.
Exodus or to illustrate how even Rashi saw as problematic the supposed exclusion of women from the revelation at Sinai.\textsuperscript{178}

But it is not only traditional aggadic midrash that makes its way into Frymer-Kensky’s work as an interpretive tool, Jewish law becomes quite central to her arguments as well, which makes her exceptional among Jewish female biblical scholars. The minimization of the role of law that we saw in Barlas’ and Wadud’s early work on the Qur’an, is generally speaking, a common trend among Jewish women bible scholars as well. A glimpse at a small sampling of scholarly texts on women and the Hebrew Bible or feminist interpretation in biblical texts reveals a predisposition to re-examining the depiction of female figures and the concept of femininity in biblical narrative rather than biblical law.\textsuperscript{179} In fact, it is noteworthy that any articles in these anthologies that do tend to deal with biblical women and questions of law are more than likely authored by Frymer-Kensky herself.\textsuperscript{180} Indeed, perhaps because of her interests in the law-based cultures of Mesopotamia or because of her own personal investment in Conservative Judaism, Frymer-Kensky discusses the law at length in her work, ultimately finding it to be less problematic for women in its biblical form than in later rabbinic articulations.\textsuperscript{181} And it is likely that, for this very reason, she makes the Hebrew Bible the primary focus of her work. But while she asserts that outright misogyny in traditional Jewish sources is more recurrent in the Greco-Roman-inflected sources of the rabbinic period, the age in which the Mishna and Gemara would begin to take shape, she does not deem the law to be irredeemably patriarchal. Contrary to

\textsuperscript{178} See Frymer-Kensky, \textit{Studies in Bible and Feminist Criticism}, 199-200; 205.


\textsuperscript{180} For example, in Alice Bach’s anthology, Frymer-Kensky is the author of an article entitled, “Law and Philosophy: The Case of Sex in the Bible.” In this work, Frymer-Kensky concludes that law was actually the preferred sphere for discussions of sexuality in Israelity culture. She was also the co-editor of a text entitled, \textit{Gender and Law in the Hebrew Bible and Ancient Near East}, eds. Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky (London: T & T Clark International, 2004). Aside from an introductory essay, Frymer-Kensky’s own contribution to the volume is a look at the legal notion of virginity in the Hebrew Bible.

\textsuperscript{181} Frymer-Kensky’s husband is a congregational rabbi in a Conservative synagogue. Her own commitment to Conservative Judaism is evidenced in her article “Halacha, Law and Feminism” in \textit{Studies in Bible and Feminist Criticism} where she heralds the Conservative movement’s more fluid conception of halakha as an antidote to the androcentric vision of classical halakha critiqued in Judith Plaskow’s writings.
Judith Plaskow, Frymer-Kensky believes that halakha is inextricably linked to Judaism, “One cannot remove law from the rest of a culture’s ideas. The halakha is an integral part of the Jewish vision for a better universe.” Accordingly, she catalogues the ways that women have historically influenced and continue to shape the halakhic tradition to this day.

However, her body of writings further reveal that, while she understands the law as central to both the biblical project as well as later Judaism, she likewise recognizes the disconnect between the two. As she explains,

…the Bible is not directly involved in matters of halacha, Jewish practice and law. Authority in halacha lies in a chain of tradition that begins with the Rabbis of the Talmud. The Bible is the source of halachic authority, but it does not function on its own and is not an independent source of authority in traditional Judaism…The rabbis turn to biblical passages to legitimate and give great weight to Rabbinic concepts or provisions. The Bible is of paramount importance as a source of legitimation. But is does not have the power to delegitimate or to invalidate Rabbinic provisions. One cannot argue that the Rabbinic reading of a biblical passage is misguided and expect that this argument will uproot the practices that were based on that Rabbinic reading…. Rabbinic readings declare the sense of Scripture…

Like both Barlas and Wadud, she is not naïve about the impact that her writings may have on everyday practitioners. She sees her own role as exegete as significant, “I am aware, somewhere in the depths of my consciousness, of the impact that my study can have on people, of the possible transformations that it can occasionally cause in Judaism and/or in people’s personal lives.” Like her Muslim counterparts, Frymer-Kensky is invested in having an impact on articulations of religious praxis, but similarly understands that there are extra-textual influences on traditions and that new interpretive horizons alone do not instigate gender reform. Accordingly, she concedes that “new understandings of biblical ideas do not have any direct impact upon the Rabbinic system.” For her, the sheer possibility of new readings illustrates that

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182 For a fuller discussion of Plaskow’s theories on halakha and feminist critiques of the law in general, see Chapter 3.
184 Idem.
the interpretations of the Rabbis are not inevitable, that they are by no means the only way to understand and approach the text. Still, her work remains in conversation with their legacy.

**Pardes and the Rabbis: Unusual Allies?**

Unlike the other exegetes under discussion in this chapter, Pardes’ work is less explicitly motivated by a desire to offer more egalitarian alternatives to a community of believers. However, as she acknowledges, “this does not mean that the present has no bearing on my [hermeneutical] endeavours.”

Despite Pardes’ tendency to foreground moments when the Law is undermined and destabilized by the biblical text, and her insistence that she is primarily interested in biblical narrative, she illustrates a unique comprehension of the intricate relationship between law and narrative in the Hebrew Bible. Unlike many other exegetes who plumb depictions of women in biblical sources with a purposeful legal blindspot, Pardes recognizes that biblical narrative is not entirely disparate from biblical law, that, in fact, the narrative itself was regarded by its audience as binding, as law, so none of its stories can be considered innocent of prescriptive ideology.

And it is similarly striking that allusions to post-biblical rabbinic traditions, both halakhic and aggadic, keep finding their way into her work. In a discussion of the motives of Moses’ mother

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187 Pardes, *Countertraditions*, 2. She is not explicit about what she means by this. However, Rachel Adler has described Pardes’ text as an example of Jewish feminist theology, suggesting that it has implications for progressive Jewish communities hoping to resuscitate the relevance of biblical theology in an increasingly egalitarian world. See Adler, *Engendering Judaism*, 200, note 26.

188 See for example Pardes’ repeated references in *Countertraditions* to the reversal of the primogeniture laws (pgs. 62, 168), the disregard for prohibitions against intermarriage (pgs. 99, 170) and the overriding of limited inheritance laws for girls (pgs. 153-154) in other biblical narratives.

189 Pardes, *Countertraditions*, 37. While post-biblical and rabbinic exegetes certainly regarded the patriarchs themselves as exemplars and their narratives as potential sources of law, the relationship between narrative and law is poorly understood and under-explored in modern biblical scholarship. Following the work of David Daube, Calum Carmichael has suggested that the laws are a response to long-established cultural and national myths. Hence, for example, the unusual practice of sending off the Azazel (the scapegoat) into the wilderness as a sin offering in Leviticus 16 is for Carmichael a re-enactment of the sin of Joseph’s brothers who dip Joseph’s tunic in the blood of a goat in order to deceive their father into thinking that his beloved son has been killed in the wilderness (see Genesis 37). Just as the brothers are to seek forgiveness for their deception, so too in invoking this cultural memory, each Israelite is asked to seek forgiveness for his sins and the sins of his forefathers. See Carmichael, “Law and Narrative in the Pentateuch,” in *The Blackwell Companion to the Hebrew Bible*, ed. Leo G. Perdue (Oxford: Blackwell Publishers, 2001) 321-334. However, Pardes and other feminist exegetes, on the other hand, tend to see narrative and law as strains of tradition more at odds with one another. A similar approach will be noted in the work of Rachel Adler in Chapter 4.
for hiding him in the bulrushes, she cites the medieval commentator Abravanel, while her analysis of the inclusion of the Song of Songs in the Biblical canon includes a protracted description of the early rabbinic discussion on the subject and the halakhic precept of “defiling the hands.” Astonishingly, she seems to suggest that, like her, the medieval rabbis were insightful readers attuned to the inherent heteroglossia in the biblical text. She refers to “a provocative midrash” in Lamentations Rabba to support her own reading of the Book of Ruth as a rewriting of the story of Rachel and Leah, and in a long footnote she describes the treasure trove of rabbinic material which serves to illuminate and expand upon the rather scant biblical material regarding Miriam. By drawing attention to these richer midrashic depictions of biblical women, she insists that she does “not mean to turn the Midrash into a feminist response to the Bible,” as it is clear that biblical men still get preferential treatment in midrashic literature. Rather, her nod to rabbinic material is simply a way for her to “accentuate biblical heteroglossia,” implying that she and her rabbinic predecessors are on the same page when it comes to the multivocality of the text.

Although the reading strategies employed in Pardes’ work are characteristically interdisciplinary, with an emphasis, as already mentioned, on psychoanalytic and literary theory, this appeal to classical rabbinic materials seems somewhat idiosyncratic. But perhaps once placed within the wider context of Jewish feminist biblical criticism, her almost seamless movement from biblical to extra-biblical sources is less extraordinary. Indeed, Adele Reinhartz has claimed that this is precisely what makes Jewish feminist biblical scholarship distinctly Jewish: “the extent to which they relate in some way to classical Jewish sources.” Likewise, Adriane B. Leveen has observed that by treating the Hebrew Bible as a multivocal text, consciously or not, Jewish feminist criticism of the bible aligns the text

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190 Pardes, Countertraditions, 82.
191 Pardes, Countertraditions, 119-121. This rabbinic idea suggests that the holiness of a text, such as a Torah scroll, can render you impure through contact.
192 Perhaps this insight is not so astonishing after all, as Robert Alter, one of Pardes’ influences has made similar statements. See Robert Alter, The Art of Biblical Narrative (New York: Basic Books, 1981), 11.
193 See Pardes, Countertraditions, 115-117; 160-161, note 7.
194 Pardes, Countertraditions, 161.
…with recent work that understands the multiple perspectives and disagreements within the Hebrew Bible as anticipatory of the spirit of lively debate and dissent found in the Talmud and midrashic collections…In common with the rabbis, such feminist interpretations contribute to an extensive written tradition of Jewish commentary that is itself rife with dialogue and argument.\textsuperscript{196}

The interdisciplinary nature of the pursuit itself may then be part of the rabbinic legacy. Even a biblical scholar such as Pardes with no obvious religious affiliations\textsuperscript{197} is an inheritor of that tradition.

As we can see then, even in studies claiming to dealing with primary scriptural texts over and above later texts, one cannot help but hear these later textual developments poking through their analysis. Despite the interpreter’s insistence that the Torah or Qur’an alone have a more gender-inclusive theology than can be found in the Talmud, Hadith, rabbinic or fiqh literature – especially if these foundational texts are read with fresh eyes without the burden of traditional midrash or tafsīr – in many ways, these women cannot unsee the intricate interpretive tradition in which they have been reared or schooled. Hence, Ilana Pardes’ treatment of the Tanakh often appeals to rabbinic literature to support her analysis while Asma Barlas’s examination of the Qur’an also references the Hadith to bolster her argument. Reading in isolation, unlearning, is impossible, especially if one wishes to remain an insider to the tradition.

\section*{Relationship with Feminism}

Closely related to this insider/outsider paradigm as well as our earlier discussion of patriarchy, law and other traditional texts are our exegetes’ respective claims regarding the relevance of feminist theory to their work. Both Frymer-Kensky and Pardes unequivocally refer to their work as feminist. In fact, most Jewish women scholars, including some who self-identify as


\textsuperscript{197} This is in contrast to Frymer-Kensky, who, as noted above was involved in the Conservative movement and married to a Conservative rabbi, Allan Kensky.
Orthodox, feel very much at home with the aims and terminology of feminist discourse, perhaps regarding feminism as a home-grown movement in which they were actively engaged from the start. Frymer-Kensky says point blank in the introduction to *Reading the Women of the Bible*, “I am a feminist. My first principle...is that men and women are created equal, and it is hard for me to imagine why ‘feminist’ is such a provocative term.” And while Pardes’s work is critical of some feminist approaches that read into the biblical past into “the fulfillment of current dreams,” her own work relies quite heavily on feminist theory and its dazzling array of interdisciplinary tools.

But Wadud and Barlas have a much more complicated relationship with this term. Wadud laments the name-calling that ensued after her publication of *Qurʾan and Woman*. She believes that she is often characterized as both “Western” and “feminist” by critics in particular in order to delegitimize her expertise, contract her sphere of influence, and portray her as anti-Islam. While she concedes that, as an African-American, she is indeed a “daughter of the West”, she seems to resent much more the feminist label, noting that she has not once referred to herself as such. In the same breath, she criticizes those who use “feminist” as a defamatory slur, and never define it as “the radical notion that women are human beings” (xviii). Still, she makes it clear that she herself has never assumed the title, regardless of definition. Even in *Inside the Gender Jihad*, published seven years later she insists, “I still refuse to self-designate as feminist...because my emphasis on faith and the sacred prioritize my motivations in feminist methodologies.” She likewise distances herself from feminism because of its history of ignoring issues of race,

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198 Prominent examples of Orthodox feminists include Tamar Ross and Blu Greenberg. Tamar Ross is the author of *Expanding the Palace of Torah: Orthodoxy and Feminism* (Lebanon, NH: Brandeis University Press, 2004). Blu Greenberg was one of the first contemporary women to suggest that, even within Orthodoxy, women might one day receive ordination. In 1997, she established the Jewish Orthodox Feminist Alliance in 1997 for those interested in improving the status of women within a halakhic framework. She is frequent contributor to its website. See http://www.jofa.org/ (accessed June 23, 2009).

199 See Chapter 1 for a review of Jewish women’s participation in the American women’s movement.


201 Pardes, *Countertraditions*, 2.

202 See Pardes, *Countertraditions*, 5, where she lists feminist theory as the first among the various theoretical tools she employs.

class, and imperialism. Nonetheless she continues to use the language of feminism to analyze gender bias in traditional Islamic discourse and talks of the need for an integrated Islamic feminist theory in Muslim Women’s Studies.

Still, Wadud is not alone in her eschewing of the term feminist. This move is also apparent in the writings of Barlas who equally resents the mislabelling of herself and other Muslim women as ‘Western feminists’ just because they engage in criticisms of Muslim men. While she liberally makes use of terms such as ‘antipatriarchal’ and ‘sexual inequality,’ she insists that her engagement with Western/feminist discourses is circumspect, and that it is generally provided as contrapuntal and subordinate to the Qur’anic view. Furthermore, by miscasting her critique as a feminist one, she contends, the specificity of her experience as a Muslim woman able to attain liberation via Islam alone is denied, as is the space to contest communal praxis from within the tradition.

In contradistinction to a scholar like Pardes, who explicitly searches for traces of subversive female voices and perspectives in the Biblical text, both Wadud and Barlas argue against such a task. While Wadud explains that she has no reason to “insert women into the discourse” as feminists in other traditions have, since Muslim women are adequately and equitably represented on a moral-theological plane in the Qur’an, Barlas goes further to suggest that there are no “female voices” in the text, only the voice of Allah, who is beyond sex or gender and argues against what she calls the ‘feminist’ claim that women are more prone to produce liberatory readings than men. While Wadud’s objections to the term feminist seem to stem more from historical abuses committed under the banner of early feminism, Barlas’ engagement with the term in Believing Women seems reductionist, as she fails to differentiate between different forms

204 Indeed, women of colour and postcolonial theorists have long criticized the complicitness of feminism in the colonialist project. See Chandra Talpade Mohanty "Under Western Eyes: Feminist Scholarship and Colonial Discourses" Feminist Review 30 (1988): 61-88.
205 Wadud, Inside the Gender Jihad, 84.
206 Barlas, Believing Women, xii.
207 Idem.
208 Wadud, Qur’an and Woman, xxii.
209 See Barlas, Believing Women, 21
of feminism. In her more recent work, Barlas has allowed that she owes much to feminism for enabling her to theorize about patriarchy. She has also admitted that not all feminisms are alike, and that, she too would consider herself an Islamic feminist – which she clearly distinguishes from a Muslim feminist\(^\text{210}\) – if Islamic feminism is defined according to Margot Badran’s formulation as a

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\ldots \text{discourse of gender equality and social justice that derives its understanding and mandate from the Qur’an and seeks the practice of rights and justice for all human beings in the totality of their existence across the public private continuum.} \quad (\text{emphasis in original})
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Still, she resists the label because, according to her, most Muslim feminists do not believe in the divine, and intentionally misread misogyny into the text.\(^\text{212}\) So until it is truly possible to unravel or sift out what is Islamic from the more mainstream and vocal contingent of secular Muslim feminists, she will remain decidedly on the sidelines of the movement.

Both Margot Badran and Miriam Cooke have noted this resistance of the feminist label among prominent Muslim women and have each found these scholars concerns to be somewhat groundless. Tracing the history of the term feminist, Badran notes that although it first appeared in France in the 1880’s, no one would dare contend that it is solely an indigenous French concept that does not translate well to other contexts. Indeed, it would appear in English in the United States as early as 1910 and in both French and Arabic (as nisa’iyya) in Egypt by 1920. Consequently, feminism does not belong to the West, nor does Islam belong to ‘the East’,\(^\text{213}\) as

\(^{210}\) Muslim feminism has tended to be a secular movement of Muslim women who have deployed modes of feminist discourse and activism similar to those in North America and Europe in order to deconstruct patriarchy in their home countries, whether Muslim majority or not. Islamic feminism on the other hand tends to root its resistance to patriarchy in traditional Islamic texts. Badran herself has destabilized this binary approach to feminisms among Muslim women. See “Islamic Feminism Revisited” in *Countercurrents.org Newsletter*, 10 Feb 2006, (accessed May 15 2007) <http://www.countercurrents.org/gen-badran100206.htm>. Nonetheless, the distinction remains a persistent one in Muslim Women’s Studies.


\(^{212}\) Idem

more and more Muslims make their homes in Europe and North America. Having searched fruitlessly for a comparable term to characterize Muslim women “who think and do something about changing expectations for women’s social roles and responsibilities,” Cooke too rejects the notion that feminism has a culturally specific context from which it cannot be wrested, and has no bones about including in her definition even those women who would never self-identify as feminist.

Notably, many other Muslim women scholars, including those whose work is explored later in this work, such as Sa’diyya Shaikh, Kecia Ali, and even Fatima Mernissi, do not seem as deterred by this label, perhaps due to the growth and influence of Islamic feminism movements that have emerged all over the globe in the last two decades. As already noted, dating back to the nineteenth century, strong Muslim women’s movements had already existed in places such as Egypt, Turkey and Iran. While these were generally construed as secular women’s movements, as Margot Badran has illustrated, the women at the centre of these early debates looked to religious sources as their base, but often lacked the religious literacy and sophistication to frame their demands in Islamic terms. Still, Badran describes the emergence of feminist movements more explicitly entrenched in the Qur’anic ideals of human equality as a more recent phenomenon. These newer Islamic feminisms work to both expose and eradicate patriarchal institutions which have been ‘naturalized’ over time as ‘Islamic’ and to implement in their communities practices of gender and social equality as espoused in the Qur’an. Although some


216 For other perspectives on the nexus of Islam and feminism, see Ziba Mir-Hosseini, “Beyond ‘Islam’ vs. ‘Feminism’ ” in IDS Bulletin 42, 1 (2011): 1-13, http://www.zibamirhosseini.com/documents/mir-hosseini-article-beyond-islam-vs-feminism--2011.pdf (accessed 24 Jan 2013). Asserting that secular feminism has lost credibility with Muslim women who see it as part of the ‘human rights movement’ that propelled forward ‘the war on terror’ in the aftermath of 9/11, and that political Islam, in which the original Iranian Islamic feminist movement had its roots, has also been a disappointment with its resistance to gender equality, Mir-Hosseini suggests that a middle path drawing upon the best visions of feminism and Islam is the one being chosen overwhelmingly by Iranian women. For a position that critiques feminism’s implicit liberalism and opposes it to other non-liberal forms of agency such as can be found among the women of the piety movement in contemporary Egypt, see Saba Mahmood, The Politics of Piety: The Islamic Revival and the Feminist Subject (Princeton, NJ: Princeton University Press, 2004).

217 Margot Badran, “Islamic Feminism Revisited.”
of this work has been applied to fiqh and family law codes in Muslim-majority countries, the centrality of the Qur’an – to the exclusion of other sources – as the basis of these gender reform projects is noteworthy. Indeed, Badran illustrates that this global movement has taken different expressions in different places, and in North America in particular, a new female-centred Qur’anic exegesis emerged to help second-generation immigrant and convert women navigate their way through an environment in which there were no “ready-made life templates as Muslims.” Interestingly enough, she refers to Wadud and Barlas as examples of these “new Islamic feminist theorists and interpreters.”

While Wadud’s and Barlas’ principled stances against the term feminist seem to become less rigid over time, perhaps they continue to resist in order to keep open a dialogue with more conservative elements in the Muslim umma. Barlas claims she is a holdout because of what the term feminist “symbolizes to most people”. And even Wadud has taken pride in the fact that her work Qur’an and Woman has contributed to an understanding “even among the most conservative of Muslim men” that women should have a stake in all issues that affect their lives. Given that both scholars are primarily known for their exegetical work on the Qur’an, the one text recognized and agreed upon by all believing Muslims, there may strategic reasons for not wanting to too closely associate themselves with a system of thought that may alienate some for its perceived anti-religious and anti-Islamic undercurrents. A similar burden to remain open to all oppositional voices may not rest on those shoulders of those scholars dealing with more controversial or less universally accepted Islamic texts.

**Conclusion**

What becomes apparent is that these four scholars have more in common across traditions than one might imagine. While Frymer-Kensky and Pardes seem much more willing to allow traditional readings to supplement their own, even Wadud and Barlas are not able to entirely part

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218 Margot Badran, “Islamic Feminism Revisited.”
219 Idem.
221 Amina Wadud, Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective (New York: Oxford University Press, 1999), xvi.
ways with Islamic interpretive traditions. The two areas where the Jewish Torah scholars and Muslim Qur’an exegetes are most obviously working at cross-purposes are their respective understandings of the nature of the text and their relationship with feminism. These major differences obviously yield different methodological approaches to the text. However, all the women posit a more holistic reading of the text, tend to portray later textual developments as more inherently misogynistic, understand the intricate/complex relationship between their alternative readings and the facts on the ground for women, and some, such as Frymer-Kensky and Wadud, even find promise and recourse for communal change in religious law itself.

This trust in the law as a potential source of reform may in part derive from these exegetes’ own textual confidence. In the case of both Frymer-Kensky and Wadud, a more thorough conception of and interest in traditional sources (exegetical and legal), coupled with the theoretical tools of academia, and the support of a community of practitioners, may be precisely the elements that empowered them to make bold interpretive and religio-legal choices in their work and in their lives. While both Pardes and Barlas are also well-versed in their respective fields of study, as we shall note, textual confidence is not merely about academic expertise in a particular area. Pardes, although interested in exegetical traditions from an intellectual perspective, has little interest in on-the-ground legal reform. Barlas on the other hand, is interested in reforming the practice of Islam, but is less willing to engage with post-Qur’anic sources in order to do so. By contrast, Frymer-Kensky and Wadud were eager to use their in-depth knowledge of traditional Jewish and Islamic interpretive and legal sources to take on the establishment. But they would not have been able to do so if they were entirely on their own. While both Pardes and Barlas continue to have the support of their universities (Hebrew University of Jerusalem and Ithaca College, respectively), Frymer-Kensky and Wadud not only had academic institutions supporting their work, but communal networks such as the Conservative movement in the United States and the Malaysian-based Sisters in Islam (which Wadud helped to co-found while writing Qur’an and Woman) to help nurture their exegetical and practitioner-activist goals. 223 As we shall see, these

223 It is noteworthy that Wadud’s more in-depth interest in law (as opposed to exegesis or theology) developed after the hostile reactions garnered by her first book and her forays into imama, or prayer leadership. So arguably, her textual confidence actually matured and was strengthened at a time when she was under fire from many parts of the Muslim world. While she remains a controversial figure in many Muslim communities, she is actively sought out and supported by others and was certainly a source of inspiration to many of the Muslim laywomen that I interviewed. For more on Wadud’s revered place among Muslim laywomen, see Chapter 5.
same ingredients (knowledge of and interest in law, plus communal, familial and institutional supports) recur among exegetes and laywomen who not only remain committed to engaging with Jewish and Islamic legal praxis, but to re-vamping, re-invigorating and re-inventing it as well.

In that vein, in the next two chapters, we will explore exegetes who more explicitly deal with Jewish and Islamic legal sources as their areas of expertise. As we shall see, different sets of texts have different rules and different histories of reception and interpretation. Consequently, some of the hermeneutical differences we noted between Jewish and Muslim women exegetes in this chapter, particularly regarding the status of the text as divine and resistance to the feminist label, will not bear out in the next ones. Nonetheless, we will observe that while some scholars continue to broach law suspiciously and still manage to avoid a legal reading of legal texts, others not only appeal to halakha and fiqh as a source of reform, but also more clearly spell out what that reform should look like in Jewish and Islamic personal status laws.
Chapter 3: Binding Precedent, Helpful Referent, or Totally Irrelevant? Feminist Talmud and Hadith Scholars Confront Religious Law

Although we have already explored female exegetes’ conception of law in the Torah and Qur’an, probing the work of feminist scholars who focus on more legally-weighted texts such as the Talmud and Hadith will further underscore the fraught relationship that Jewish and Muslim women have with religious law, and how negotiating with competing audiences and interpretive communities (whether lay or academic) requires high degrees of textual confidence. Indeed, approaches to law are not monolithic among female exegetes. As we shall see, while many of the women profiled in this chapter are resistant to accepting historical rabbinical and ‘ulamā’ic rulings pertaining to women as binding precedents, some do regard traditional legal arguments as a helpful referent for rethinking unequal practices in contemporary Jewish and Muslim communities. At the other ends of the spectrum are those who insist that these laws still require adherence and those who suggest that religious laws formulated in the Middle Ages are antiquated and beyond fixing. But as we shall see, even these two positions are not as clear cut as they initially appear. Those inclined to dismiss religious laws cannot help but encounter aspects of them in their daily interactions with community members, and those who claim that the law still has authority have a more flexible notion of legal obligation than one might expect. But regardless of one’s personal take on the relevance of the law today, to understand why it is so critical for women scholars to unpack these later interpretive texts, a short note on the traditional status of the Talmud and Hadith canon in Jewish and Muslim communities is in order.

Talmud and Hadith as Sources of Law

Even though the Torah and Qur’an are seen as the primary sources of law in Judaism and Islam, in effect, later sources such as the Talmud and Hadith are more directly involved in the

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1 I am thankful to Ayesha Chaudhry whose article “The Problems of Conscience and Hermeneutics: A Few Contemporary Approaches” in Comparative Islamic Studies 2, 2 (2006): 157-170, was extremely helpful in realizing this distinction in conceptions of law among contemporary Muslim scholars.
construction/production of the law and legal meaning in both traditions. Although Fazlur Rahman maintains that Muslim jurists went wrong by confusing moral exhortations with legal ones and regarding the Qur’an as a “lawbook and not the religious source of the law” in many respects, it seems that the Qur’an became somewhat marginalized as even a source of law, for, as Barlas has illustrated, the meaning of the Qur’an’s verses was established in the hadith, and consequently the jurists relied more upon the hadithic rendering of the Qur’an than the Qur’an itself in their development of fiqh. Furthermore, since only a small quantity of material in the Qur’an was considered legal as compared to the vast amount of hadith in circulation, the jurists more often relied upon the Hadith in their hermeneutical discussions.

As Calder has pointed out, “The vast bulk of hadith material, as contrasted with the modest quantity of juristic material in the Qur’an, ensured that hadith was in practice the dominant element of revelation in hermeneutical discussions.” Indeed, the popular aphorism “the Book is more in need of the Sunna than the Sunna of the Book,” speaks to the role of the Sunna in clarifying the Qur’an, and in some ways, superseding it as a guide to community practice.

Similarly, in the previous chapter, we saw how the rabbis were responsible for creating both the meaning of the biblical text and the framework for halakha. As Frymer-Kensky has put it, “the Bible is not directly involved in matters of halakha, Jewish practice and law. Authority in

\[2\] Fazlur Rahman, *Major Themes of the Qur’an*, 47.

\[3\] Quoting from Bradon Wheeler’s *Applying the Canon in Islam*, Barlas suggests that “the ‘revelation contained in the text of the Qur’an is interpreted through the medium of the sunnah to indicate the contents of the Shariah’” (2). In effect, the principles of jurisprudence (통신 al-fiqh) are derived by way of the Sunnah, hence by limiting the Qur’an’s canonical authority.” See Barlas, *Believing Women*, 70 and Wheeler’s *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Hanafi Scholarship* (Albany: State University of New York Press, 1996) 2-10.

\[4\] Together, the six canonical works of Hadith contain around 19,600 hadiths. This is a deluge of material as compared to the Qur’an’s approximately 6,300 verses. Consequently, the Hadith were, and remain, a priceless resource for unearthing the practice of the Prophet as well as Qur’anic tafsīr, theological doctrine, intellectual and social history, and of course, law for the Muslim community.


halakha lies in a chain of tradition that begins with the Rabbis of the Talmud.’’ Indeed the early rabbis themselves would describe the traditional transmission of authority as follows,

Moses received the Torah from Sinai, and transmitted it to Joshua, Joshua to the Elders, the Elders to the Prophets, and the Prophets transmitted it to the Men of the Great Assembly. They said three things: Be deliberate in judgement; and raise up many disciples, and make a fence for the Torah. [ie., define the boundaries of Jewish law].
(Mishnah Avot 1:1)

Seeing themselves as carrying on the legacy of the fabled Men of the Great Assembly, a post-biblical group of 120 sages traditionally thought to have been responsible for, among other things, the fixing of the biblical canon, the rabbis claimed that their authority and mode of Torah interpretation could be traced back to Moses himself. In this way, they established themselves as the true inheritors of the meaning of Torah, to the exclusion of other rival groups. Biblical assent for rabbinic determination of the law would later be read back into Deuteronomy 17:8-11, where they frame themselves as the “judge who is in office in those days” who interprets the law for the community and from whose decision one cannot stray “either to the right or to the left.”

The jurists in Islam would similarly tie their interpretive authority to Qur’anic verses such as 4:59, “O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you.” Designating themselves as “those charged with authority,” they would likewise see Qur’anic sanctioning of their ijma’, or juristic consensus, as a legitimate source of law in a

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8 At the time that this tradition was being circulated, the most threatening group to the pre-rabbinic Pharisees would have been the Sadducees, associated with the Temple priests, and the Essences, a less political group of desert-dwelling ascetics. For more on this period see, Lawrence Schiffman, “Jewish Sectarianism in Second Temple Times” in *Great Schisms in Jewish History’,* R. Jospe and S. Wagner (eds.), (Denver, University of Denver: 1981), 1-46.

9 The full citation reads as follows, “If a judicial decision is too difficult for you to make...then you shall immediately go up to the place that the Lord your God will choose, where you shall consult with the levitical priests and the judge who is in office in those days; they shall announce to you the decision in the case. Carry out exactly the decision that they announce to you...You must carry out fully the law that they interpret for you or the ruling that they announce to you; do not turn aside from the decision that they announce to you, either to the right or to the left.” Deuteronomy 17:8-11, NRSV.

10 That, in later legal theory, ijmā’ would be limited to the consensus of jurists during a particular age would become a source of controversy, as originally, it simply referred to “the agreement of scholars based on the continuous practice that was, in turn, based on the consensus of the Companions.” See Hallaq, *Origins and Evolution of Islamic Law*, 111. Shafi’i thought that interpretation of the Qur’an and hadith should be left up to the scholars who would use their faculties of ijtihād, or independent reasoning, to discern what was in the texts for the
verse such as 4:115, “If anyone contends with the Messenger even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of Faith, We shall leave him in the path he has chosen, and land him in Hell...” As Hallaq has noted, the fact that this verse has little direct bearing on consensus, yet was regarded among jurists as the most sound proof that consensus of the scholarly community is authoritative, is an illustration of how far the jurists were willing to go to find a scriptural basis for their right to define law. While a few weak hadith, such as “My community shall never agree on a falsehood,” were also invoked to reiterate the reliability of the scholarly community once it has agreed, the recognition of ijmā’ as a source of law represented “the ultimate sanctioning authority which guaranteed the infallibility of those positive legal rulings and methodological principles that are universally agreed upon by Sunni scholars.”

As we can see then, by fashioning themselves into the primary interpreters of tradition, Jewish rabbinical leaders and Muslim jurists co-opted the legal meanings of the Torah and Qur’an, elevated their own authority as lawmakers and simultaneously downgraded the legal force of God’s revelation. Hence, if we really want to see how contemporary Jewish and Muslim female scholars engage with religious law, it behooves us to look at their conception of the sources where rabbis and jurists really began to expound on law: in the Talmud, Hadith, halakha and fiqh literature.

Comparing Scholarly Approaches to Talmud and Hadith, Halakha and Fiqh: Apples to Oranges?

Given that women’s socio-legal status in the Torah and Qur’an are similar and that each source is traditionally regarded as divine revelation in their respective faith communities, searching for parallels in the ways that Jewish and Muslim women approach these texts seems like a

whole community. While he believed that ijmā’ provided a degree of certitude, once the whole community had come to an agreement, his later followers understood his position to mean that only those adept in ijtihād, in other words, the scholars of a particular period, could offer a valid ijmā’. See N. J. Coulson, A History of Islamic Law, 68.

11 According to most classical juristic renderings of the verse, straying from the path of the believers, which is established by the scholarly community, results in punishment in the same way that disobeying the Prophet would lead one straight to hell-fire. See Hallaq, A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh (Cambridge: Cambridge University Press, 1997), 75.

12 Idem.
reasonable exercise. In other words, contrasting feminist Torah exegesis to women’s Qur’anic exegesis is the proverbial equivalent of comparing apples to apples. However, comparing feminist treatment of the Talmud and halakhic discourse to feminist/progressive engagement with Hadith and fiqh is slightly more problematic given that these sources do not quite map on to one another in terms of genre, content, or style. The Talmud is a vast collection of rabbinic writings dealing with matters of law, ethics, philosophy, history, and folk practices that often seems to thwart attempts to present a coherent legal praxis, while the Hadith are a collection of short narratives pertaining to the Prophet’s sayings, beliefs and actions; halakha is articulated through later codes and responsa, which function symbiotically to formulate responses to new problems that will then become part of the established legal landscape, while the Islamic legal tradition is comprised of both theoretical sources, such as the uṣūl al-fiqh which explore the hermeneutical principles for deriving law from the sources of revelation, and the doctrinal sources, or fiqh books in which jurists identify, interpret and elaborate on laws governing ritual (ibadat) and social relations (muamalat). While there is overlap in terms of the concerns, scope and topics covered by these texts, stylistically, they are quite different.

**Role of Attributions**

Nonetheless, the Talmud and hadith, as the lifeblood of these legal systems, do, perhaps, have more in common than one might initially suspect. They both record orally transmitted material from earlier periods and carefully cite those responsible for bringing forward the teachings contained within them. To be fair, in the Hadith, the chains of transmission would become critical to later Muslim scholars for establishing both the authenticity and authority of a tradition, while in the Talmud, attributions of a teaching to a particular sage held little meaning even for later generations of rabbis.\(^\text{13}\) While the Talmud does include some brief hagiographies of

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\(^{13}\) The issue of rabbinic biography and attributions is fraught in modern scholarship. While Jacob Neusner has branded as ‘gullible’ anyone who takes these attributions at face value, Yaakov Elman has more recently posited that the meticulous recording and transmission of variants in chains of attribution requires a second look, and that attributions may have been used a) as a form of respect for one’s teachers and b) to imbue a certain position with a greater degree of gravitas. See Neusner, *Reading and Believing: Ancient Judaism and Contemporary Gullibility* (Atlanta: Scholars Press, 1986) and Yaakov Elman, “How Should a Talmudic Intellectual History be Written: A Response to David Kraemer’s Responses” JQR 89 (1999): 361-386. Regardless of one’s approach to this issue, until the time of the Geonim, when single-author commentaries began to arise, the role of individual rabbinic personalities seems to have had little halakhic import.
rabbinic personalities, they are not cited as exemplars in the same way as the Prophet is in the Hadith.

**Inter-dependence with Later Codes and Law Manuals**

Still, as sources of the law, the Talmud and Hadith are both reliant on later texts to flesh out what it means to live as a Jew or Muslim. Although the Hadith are meant to be based on the Prophetic Sunna, the actual practice of the Prophet, as a report of his actions and beliefs, the legal meaning of a hadith is not always transparent from the text itself, and in fact relies on later interpretive works, such as *ahkam al-hadith*, which would catalogue and comment on the legal hadith, and the fiqh sources to tease out more definitively the details of substantive law. The Talmud too relies on later halakhic codes to tease out its specific laws, as “rhetoric and style more than substantive law and final conclusions, motivated the structure of argumentation.”

Indeed, while the Mishnah, the earlier strata of legal discussions included in the Talmudic corpus, did strive in many respects to serve as a normative code, as Wimpfheimer and others have observed, the Talmud regularly overturns this code by requiring the Mishnah to justify its legal conclusions and in the process foregrounds lived application of the laws in a way that a mere legal code cannot. Nonetheless, the Talmud too, despite its inclusion of dialectics and debate, does also move towards resolution as much as possible to serve as a guide to a living praxis.

**Non-Divine Sources**

Furthermore, these sources do serve similar roles in each religious community: both the Talmud and the Hadith are sources of the interpretive tradition as well as law; and neither set of texts is understood as being ‘divine’ in the same way that the Torah and Qur’an are regarded as the word of God. Granted, as noted earlier, al-Shafi’i would elevate the hadith, as reflection of the Sunna, to having the status of “unrecited wahy,” and the rabbis understood their oral law as having been revealed at Sinai along with the Written Torah. Nonetheless, the preponderance of the Torah

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16 Although there are also separate collections of midrash and tafsīr, much midrashic material is found in the Talmud, while the hadith is also a primary source of tafsīr.
17 Still, even the rabbis of the Talmud acknowledged that some of their dictates were rabbinic ordinances, attending to specific changes in social and politicial circumstances, and not derived from the Torah per se. See for example
and Qur’an over other sources was still acknowledged by these scholars, leaving later interpretive sources as being more open to human influence and reason.

**Less or More Controversial as Subjects of Feminist Interpretation?**

So in some respects, because the Talmud, Hadith, as well as halakhic codes and fiqh manuals are more clearly associated with human reason, it is less controversial – at least from a theological perspective – for women scholars to critique these later, ‘non-divine’ sources as disadvantaging women. In other words, focusing on legal texts makes it easier to avoid calling God a misogynist and allows one to lay the blame for gender injustice in halakha and fiqh at the feet of the men who created and perpetuated these legal systems and who were themselves products of patriarchal societies and worldviews. If men created these systems, it follows that men (and women) can also fix them.

On the other hand, because the tools for analyzing religious legal texts were highly specialized and the environments for pursuing serious study of these were often not made accessible to women, women scholars still face much resistance when they try to make headway in these disciplines, whether in academic or traditional circles. While historically women were regarded as lacking the rational faculties to delve into these fields, even today, they are often told that they do not have the right background or skills to understand these texts ‘correctly’ and are sometimes eyed suspiciously when they try to introduce new tools for broaching these materials. Add to this the fact that the implications of the findings of women exegetes could have a direct impact on actual communal praxis (since these texts deal with law more directly and transparently than the revealed texts), and feminist interpretation of the Talmud and Hadith may be perceived as even more threatening to the status quo than a gender critique of the Torah and Qur’an. As we shall see in Chapter 5, from the perspective of laywomen, that is also precisely why it is so important for contemporary women to get a foothold in these subjects.

Mishnah Gittin 4:2, where Rabban Gamliel rules that a man may not annul a previously dispatched divorce decree by convening a rabbinic court in another city. Although the practice is acknowledged as permissible in the Mishnah, Gamliel puts a stop to it to “mipnei tikkun olam”, especially as a public policy ordinance to prevent the possibility of accidental adultery on the part of wives who believe they have indeed been divorced. Nevertheless, in the modern period, Haredi Jews would take the maximalist approach to revelation even further, denying any rabbinic innovation and understanding all past and future rabbinic interpretations as having been revealed at Sinai as well. See Tamar Ross, *Expanding the Palace of Torah*, 60-61.
Women Scholars and Legal Texts: Chapter Outline

In terms of approach, in the remainder of this chapter, I will compare Judith Hauptman’s analysis of Talmudic texts to that of Miriam Peskowitz and contrast Fatima Mernissi’s treatment of the Hadith corpus to the approach used by Sa’diyya Shaikh. In each case, I will examine the method, gender critique, and conception of law utilized by each of these scholars.

As we shall see, Judith Hauptman and Fatima Mernissi actually turn to the hermeneutical moves made in the rabbinic tradition and later Islamic jurisprudence as a way of opening up Jewish and Islamic legal texts so that they can yield more favourable results for present-day women. Notably, it is not so much particular rabbinic/juristic strategies that they are invoking, but rather the very existence of debates on particular issues as an indicator of flexibility, of possibility, and as a productive space for rethinking women’s options within the religious legal framework. We will note that this strategy is also found in the writings of Tikva Frymer Kensky and Amina Wadud when they are writing about halakha and fiqh more generally, rather than merely the expression of law within the Biblical and Qur’anic framework. The same approach will also recur – to a more modulated degree – in the work of Kecia Ali in the next chapter as well. As noted earlier, it is not always clear the extent to which these scholars regard the earlier legal tradition as binding, or instead, merely as a helpful referent for working through and resolving issues that continue to plague women today.

We will also note that exegetes who take a more literary approach to legal texts are the ones least likely to appeal to the later legal tradition as a basis for reform. Those who employ this type of literary analyses include Miriam Peskowitz, Sa’diyya Shaikh, and Ilana Pardes whose work was examined in Chapter 2. As we saw previously, Pardes believes that in reading these texts through our own lenses, often it is merely our own voices that echo back, perhaps alluding to the fact that we are possibly reading into these documents ideas that were never intended to be there, and so, they have little value for changing things in the present. Similarly, Miriam Peskowitz, as we shall see, finds no practical utility in transposing early rabbinic solutions into a contemporary feminist landscape, as such an approach tends to ignore the structural inequalities at the core of these earlier textual traditions. And Sa’diyya Shaikh, we will observe, takes another approach still, seeing women’s own experiences and more worldly forms of knowledge as overriding more
established readings of canonical texts, and it is arguable to what extent she understands the Islamic legal tradition as binding on her at all, as a Muslim living in a non-Muslim state.

Following the format of the previous chapter, the critiques of female exegetes will be couched in the larger framework of modern Talmudic and Hadith studies to see how their work either departs from or continues with trends established by earlier scholars. As we shall see, the lines between academic and ‘confessional’ or ‘traditional’ modes of analysis are not always clear, especially in Jewish circles, and whether consciously or not, the work of women scholars straddles these two worlds, in an effort to gain legitimacy and recognition both among lay practitioners and colleagues in these still largely male-dominated fields. In all cases, the particular deconstructive tools that female exegetes are using are reflective of the types of audiences with whom they hope to be in conversation. That they choose to take new interpretive approaches to these legal texts despite the opposition coming at them from a variety of arenas indicates a certain degree of textual confidence; a belief that through their engagement with traditional texts, they can ameliorate the every day lives of practicing Jewish and Muslim women.

### Academic Talmud Study: Paving the Way for Feminist Analyses

Just as the Enlightenment brought with it new approaches to the study of the Torah, parallel innovations in Talmud study were also being carried out in Western European universities and seminaries by the Wissenschaft des Judentums scholars. Turning to the structure and final form of the text itself, these scholars explored among other things, issues of redaction, alternate readings of words, and textual interpolations by post-amoraic authors. Much of this work was not entirely new, as even traditional authorities such as Sherira Gaon, Maimonides, and the Vilna

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18 This slippage between traditional and academic scholars is also apparent in the types of works and texts that the laywomen of Chapter 5 were reading. See pg 248-250.

19 In a series of responsa, Sherira Gaon addresses questions posed to him by the Jewish community of Kairouan, Tunisia about the redaction of the Mishna, Tosefta, and the role of the post-amoraic sages. See The Igerret of Rav Sherira Gaon, translated and annotated by Nosson D. Rabinowich (Jerusalem: Moznaim, 1988).

20 See Maimonides, *Mishneh Torah*, Hilkhot Malveh ve-Loveh, 15:2, where he discusses a scribal error in the text and compares the version of the Gemara he has to a 500 year old manuscript with a variant reading.
Gaon had raised redactional questions, engaged in alternate readings and manuscript analysis in order to decode more obscure Talmudic passages, and even supported emendations to the text itself. However, by the 19th century, critical scholars had unprecedented access to Talmudic manuscripts, which allowed for more historical and linguistic analysis of the text, issues which were of little concern to traditional scholars. Critical approaches also employed to a much greater degree non-normative works such as the Tosefta and the Palestinian Talmud as a frame of comparison with the Bavli, and scholars such as Hirsch Mendel Pineles (1805-1870) began to suggest that the amoraim had in many cases misinterpreted the Mishnah. While earlier rabbis had recognized that the amoraim often departed from the plain-sense of the Mishnah in their interpretations, Pineles’ audacious assertion that they had made errors, was not taken lightly by those in the yeshiva world. Nonetheless, Pineles’ work would precipitate a shift in Talmud study, which allowed for engagement with the Mishnah as a unique work, separate from the Gemara, while also paving the way for the recognition of different authorial and editorial strands in the Babylonian Talmud as a whole.

This early work would lead to a range of new methodological approaches in the study of Talmud, and rabbinic literature on the whole, including the application of source-critical

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22 Rabbi Yom Tov Lippman Heller approved of Mishnaic interpretations that departed from those of the Amoraim as long as the results had no bearing on practical halakha. See Mark B. Shapiro, “Talmud Study in the Modern Era: from Wissenschaft and Brisk to Daf Yomi” in The Printing of the Talmud: From Bomberg to Schottenstein, Eds. Sharon Liberman Mintz and Gabriel Goldstein (New York : Yeshiva University Museum, 2006), 105.

23 Hidary (2009) and Shapiro (2006) have both pointed out that maintaining a strict division between ‘academic’ and ‘traditional’ approaches to Talmud study is both inaccurate and counter-productive, as many traditional scholars, particularly those who lived prior to World War I, readily made use of the tools (Talmudic dictionaries, in particular) and publications of critical scholars in their rabbinic seminaries. As Shapiro points out, Jehiel Jacob Weinberg’s (1884-1966) Mehiram ha-Talmud is a good example of a work that attempts to bridge the two worlds, combing traditional learning with the insights of critical scholarship. In the contemporary period, this blurring of boundaries is even more apparent when it comes to women’s participation in the study of Talmud. On women and the study of Talmud in both seminaries and universities, see below.

24 In the broadest sense, ‘rabbinic literature’ may refer to any writings by the people who have referred to themselves as rabbis between late antiquity and the present. However, in most academic circles, it would become a catch-all category to capture the immense output of diverse rabbinic writings from the period of the Mishnah (ca. 200 CE) to the period of the Geonim (ca. 700 CE). Although these writings are grouped together, each of the sources (namely, the Mishnah, Tosefta, two Talmuds, and various works of Midrash Aaggada and Midrash Halakha) represent a
methods,\textsuperscript{25} as well as tools from cultural studies, philosophy,\textsuperscript{26} anthropology, literary theory, especially post-structuralist understandings of inter-textuality\textsuperscript{27} and orality,\textsuperscript{28} as well as comparative legal theory,\textsuperscript{29} to name just a few. Feminist approaches to rabbinic literature would likewise emerge out of these new methodologies. As we shall, much like feminist interpretation of the Torah, feminist hermeneutics of the Talmud makes use of multiple theoretical tools at once.

**The Birth of Feminist Analyses in Rabbinic Literature: The Influence of Jacob Neusner**

Jacob Neusner’s work deserves mention here if only because of its tremendous impact on feminist Talmud studies. The prolific Neusner is ubiquitous in contemporary rabbinics, and as Tal Ilan has observed, he has “raised” a generation of scholars in the United States, while also exerting influence in both Europe and Israel.\textsuperscript{30} He primarily made his mark by undermining earlier scholarly approaches which depended heavily on Talmudic material as a means of reconstructing Jewish history.\textsuperscript{31} Neusner’s conservative approach to gleaning historical

\begin{footnotes}
\item[29] See the work of Yaakov Elman and Catherine Hezser in *Rabbinic Law in its Roman and Near Eastern Context*, ed. Catherine Hezser (Tubingen: Mohr Siebeck, 2003).
\item[31] Neusner’s body of work is enormous, but for one of his more influential books, see Neusner, *Development of a Legend: Studies on the Traditions Concerning Yohanan Ben Zakkai* (Leiden: Brill, 1970). One of the text’s claims is that both events and attributions cited in the Talmud cannot be relied upon as having even a kernel of historic accuracy. Neusner also stirred controversy in rabbinics with his ‘authorships’ thesis, which asserts that each individual work within rabbinic literature is an autonomous document, so completely re-shaped by its final
\end{footnotes}
information from rabbinic sources remains highly influential, and this has had two separate impacts on feminist study of the Talmud. To begin with, since much of the earliest feminist work on Jewish women was confined to the field of history, Neusner’s theories, in the short term, curtailed serious feminist study in rabbinics. On the other hand, his contention that the texts cannot be assumed to be reflective of actual social practices among any groups of Jews in late antiquity was also somewhat liberating for feminist scholars in that it lead them to explore new methodologies for retrieving the lives of Jewish women in this period, by comparing Talmudic sources to evidence from contemporaneous, non-rabbinic sources and material culture. It also led to other, non-historical approaches, such as engaging in literary analyses of rabbinic texts (especially aggadic midrash) to see how gender is constructed, and feminist

32 This tendency has been noted by Laura Levitt and Miriam Peskowitz in Judaism Since Gender (London: Routledge, 1997), 4-5 and may be seen in Jewish Studies overall. According to Michael Zank, this focus on history in the study of Judaism as an academic discipline can be traced back to the days of the Wissenschaft des Judentums, when history and philology were deemed the only legitimate areas of study. Yearning for acceptance into German society, the Wissenschaft’s founders attempted to redefine Judaism, not as a practice or worldview, but as a body of knowledge. Hence, history and philology -- the study of Jewish languages, literatures and societies -- which rendered these ideas as part of the Jewish past, fit well with the political agenda of these scholars. According to Zank, history continues to be the dominant sub-field in the discipline of Jewish Studies because of ongoing Jewish communal concern -- translated into funded endowments and chairs within university departments -- with questions of identity in a post-holocaust world. See Zank, “Zwischen den Stühlen? On the Taxonomic Anxieties of Modern Jewish Philosophy,” in European Journal of Jewish Studies 1 (2007): 121.

33 See Tal Ilan, Mine and Yours are Hers, 24-27. However, Ilan, has also noted a recent return to historical analyses of Talmudic sources, precipitated by Shulamith Magnus’ influential essay “Out of the Ghetto: Integrating the Study of Jewish Women into the Study of the Jews.” Calling the Talmud “a treasure trove waiting to be mined by those who possess competency in both rabbinics and a commitment to using gender as a category of analysis,” Magnus contended that, with the right methodological tools, rabbinic sources could and should be used as indicators of social history. See Magnus, “Out of the Ghetto: Integrating the Study of Jewish Women into the Study of the Jews” in Judaism 39 (1990): 28-36.


analyses of personal status, reproductive, ritual and leadership issues as portrayed in halakha and practice.  

But Neusner also set the tone for feminist scholarship of rabbinic literature in other ways, since as both Judith Hauptman and Tal Ilan have noted, Neusner himself was the first scholar to “engage in a systematic reading of rabbinic texts from a feminist perspective.” After a close reading of the Mishnaic Order of Women, Neusner came to the conclusion that the rabbis’ anxiety about women’s sexuality undergirds the text and drives the selection of material by the Mishnah’s final editors. According to Neusner then, the rabbis developed a system wherein women would be under the control of men as much as possible. This work was then followed by a contribution by one of his students, Judith Romney-Wegner, who in her landmark text Chattel or Person? The Status of Women in the Mishnah, concluded that while women were treated like property when it came to their sexuality and reproductive capacities, unmarried adult daughters, divorcees and widows with children, in fact, had a considerable amount of autonomy.

The Key to the ‘Rabbinics’ Glass Ceiling?: The Inter-relationship between ‘Traditional’ and Academic Talmud Study

However, after these initial works, little other feminist research exploring women’s legal status in the Talmud would appear in academic circles for some time. Hauptman, herself a student

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38 Hauptman, Rereading the Rabbis: A Woman’s Voice (Boulder, CO: Westview Press, 1998), 12, note 10. While he does examine the status of women and look for instances of oppression in the text, it is arguable whether his method could be qualified as ‘feminist.’

39 Neusner identified the moments when women are transferred from the control of one man to another (i.e., father to husband, as in the case of marriage) as the greatest moments of danger. See Jacob Neusner, A History of the Mishnaic Law of Women, Parts 1–5. Studies in Judaism in Late Antiquity, Vol. 33 (Leiden: Brill, 1980).


41 Notably, Rachel Biale’s work, Women in Jewish Law: An Exploration of Women’s Issues in Halakhic Sources would be published for the first time in 1984. Still widely regarded as the most comprehensive feminist analysis of women’s status in halakha throughout the ages, it provides a thorough analysis and deconstruction of Talmudic passages dealing with women’s personal status, reproductive, ritual and leadership rights. However, because it offers a survey of Orthodox halakha as it has progressed in time, it is not often regarded as an analysis of rabbinic literature, per se. Both Hauptman and Peskowitz list Biale’s work in their bibliographies. Hauptman in particular
of Neusner, and who, as previously mentioned, also bears the distinction of having been the first woman ever to graduate from an academic program with a PhD in Talmud, would eventually add her own major work to the emerging voices, as we shall see below. But in a 1994 article she would account for the otherwise dismal output of feminist work in rabbinics in a variety of ways: the disinterest of Talmudists in ‘area studies’, the fact that Talmud departments are dominated by more traditional Jews and lastly, because so few women at that time were actually involved in critical Talmud study. She indicated that while the academic study of Talmud was not closed to women, the traditional yeshivas – where most male Talmud scholars received their initial training – most certainly were.43 As she explained,

few women arrive in graduate school with the ability to read rabbinic texts...most men in the discipline have spent years in a yeshiva learning how to read and interpret Talmudic texts and commentaries...To prepare for a career in rabbinics, most women would need to spend years trying to make up for the background deficit.44 This intimate relationship between ‘traditional’ and academic Talmud study has also been noted more recently by Richard Hidary of Yeshiva University,

Except in the cases of a few exceptionally brilliant people, the deficiencies in scholarship in Second Temple and Rabbinic literature by individuals without a yeshiva background or

notes how her own work has a different focus than Biale’s which “presents the basics of Jewish law, from the Bible until today, as it affects women”. See Hauptman, *Rereading the Rabbis*, 6.

42 Tal Ilan has suggested that the small output of feminist work in this field was a result of other scholars daring not to depart from the analytical framework which Neusner presented as definitive. Tal Ilan has described Neusner’s influence as so considerable that it “had a numbing effect on the study of Jewish women in rabbinic literature.” See Tal Ilan, *Mine and Hers are Yours*, 24. While this may be overstating his influence, in 1994, when Judith Hauptman would pen an essay on “Feminist Perspectives on Rabbinic Texts” for a new anthology on feminist work in Jewish studies, she would likewise remark, that while other sub-fields in Jewish women’s studies were thriving, in the previous fifteen years, only two worthwhile feminist works had been produced on rabbinics: those of Neusner and Wegner. See Hauptman, “Feminist Perspectives on Rabbinic Texts,” 43.

43 While The Hebrew University of Jerusalem had a separate Talmud department as early as 1928, most aspiring students of Talmud or Rabbinics in North America would receive their degrees through a Department of Religion, Law, Near and Middle Eastern Studies or more recently, Jewish Studies. The major rabbinical schools in the United States (see note 51), which would all become accredited universities, would also come to have their own departments of Talmud. As soon as women gained admittance to these universities (in most cases, by the mid-twentieth century), they were free to study Talmud. In the case of Yeshiva University, women interested in Talmud, were historically directed to their parallel women’s college, Stern College for Women, where the highest degree granted is a Master’s. However, in August 2011, Yeshiva University’s Bernard Ravel Graduate School of Jewish Studies, would award its first PhD to a female graduate. See “Shauna Strauch Schick to Receive Doctorate in Talmud” *YU News*, 18 August 2011 (accessed 29 January 2012) blogs.yu.edu/tags/Talmud

44 Hauptman, “Feminist Perspectives on Rabbinic Texts,” 42.
some kind of equivalent are evident. Very few people can gain the skills necessary to dissect and follow the reasoning of a difficult sugya [Talmudic passage] without years of traditional havruta [traditional form of partner study] learning.\(^{45}\)

While the comments of Hauptman and Hidary clearly privilege a certain type of reading rabbinic texts, which will be discussed further below, they also point to the inter-dependence of today’s modern yeshiva programs and academic departments of Talmud.\(^{46}\) It is perhaps no coincidence that an increase in women’s opportunities for ‘traditional’ forms of Talmud study in the 1980’s and 1990’s seems to have run parallel with women’s increased involvement in the academic study of Talmud and the emergence of new approaches for reading Talmudic law.\(^{47}\)

**Parallel Feminist Hermeneutics in the Academy and Beit Midrash**

But there are also notable parallels between the hermeneutical approaches used by women in both religious seminaries and university settings. Indeed, while the Talmud-focussed programs offered at women’s seminaries are intensive, it would be incorrect to suggest that the mode of study is identical to the hermeneutical approaches traditionally used by men. As Chaim Brovender, the founder of the first high calibre women’s seminary in Jerusalem, has observed, since women approach the texts out of interest, rather than a sense of religious obligation, women’s engagement with the Talmud tends to be more creative, not bound by traditional

\(^{45}\) Hidary, “Traditional versus Academic Talmud Study,” 5.

\(^{46}\) This is further complicated by the fact that several prominent Departments of Talmud are in fact affiliated with the rabbinical schools of contemporary Judaism’s three largest denominations: Yeshiva University (Orthodox), the Jewish Theological Seminary (Conservative) and Hebrew Union College (Reform). The latter two schools have freely made use of source-critical methods for some time, but these approaches are even gaining currency at Yeshiva University. See Hidary, “Traditional versus Academic Talmud Study,” 8.

\(^{47}\) Although young Orthodox girls enrolled in post-war Jewish day schools often continued to learn Talmud into their high school years, there was a vast discrepancy between the curricular standards for girls as compared to boys. Sensing that the level of religious knowledge being transmitted to them was both substandard and purely utilitarian, young religiously-observant girls began demanding more. In response to this demand, several post-secondary institutions providing the advanced study of Jewish law to women would open their doors in both Israel and the United States between the late 1970’s and the present. In 1992, the Manhattan-based Drisha institute would go even further than most of these seminaries by offering a three-year program for women which taught precisely the same curriculum that men seeking ordination were receiving in traditional Orthodox yeshivot. While the ordination of women had, by then, become routine in the rabbinical schools of the other major denominations, the Drisha program – although purportedly non-denominational -- stopped short of conferring on its female graduates any sort of official title. See Drisha website [www.drisha.org](http://www.drisha.org) (26 January 2012).
models. As well, since many of the women return to Talmud study either after or while in the midst of a secular liberal university education, they too are more likely to be influenced by diverse academic approaches in their chosen discipline than their male counterparts, who, ironically, have been more insulated from the secular world. Reflecting on the approach to Talmud study in the Jerusalem-based women’s *beit midrash* [literally, ‘house of study’] where she teaches, Michal Tukochinsky comments,

> Rather than reflect the male yeshiva, our Beit Midrash reflects life itself. Internal and external challenges inject excitement to our learning and enrich it continually: one student considers the question of work on Shabbat through classical texts, but also through comparisons with Escherian art; another student discusses the authority of the Kohen Gadol (high priest) using legal tools and terminology; yet another uses the philosophy of Jacques Derrida to analyze the significance of the act of giving a *get* (bill of divorce).

So while more access to Talmudic studies has arguably produced more women who can ‘compete’ with men in academic departments of Rabbinics, yeshivas have also likewise been transformed by women studying at universities and introducing into their studies source-critical and literary methods for reading the texts. So secular and traditional systems for reading Jewish legal texts feed into one another.

Because of this symbiotic relationship, what was emerging in the academy in the 1990’s has now burgeoned into an exciting and dynamic discipline. So many scholars are now examining Talmudic texts using gender as a category of analysis that a critical feminist commentary to the Babylonian Talmud is currently in production under the editorship of Tal Ilan. Ilan has identified the methodological approaches utilized thus far in the project as, “literary, theological, philosophical, ideological, political or historical,” and Joshua Schwartz has astutely noted the


50 Thus far, an introductory volume and three individual tractates with commentary have been published, but with scholars such as Tal Ilan, Judith Hauptman, Catherine Heszer, Shaye J D Cohen, Tzirah Meachem, Judith Baskin, Tamara Or, Elizabeth Alexander and Shulamith Valler involved in the project, analyzing Talmudic tractates from a variety of disciplinary perspectives, one can see how far the field has developed since Hauptman identified Neusner and Wegner as the only significant contributors to the field.
absence of more material or archeologically-oriented studies in the volume.\footnote{See Joshua Schwartz, Review of Tal Ilan, Tamara Or, Dorothea Salzer, Christiane Steuer, and Irina Wandrey, eds., A Feminist Commentary on the Babylonian Talmud: Introduction and Studies, in Review of Biblical Literature 5 (2009) <bookreviews.org> (accessed 7 February 2012).} I would add to this, that none of the methods are identified as ‘legal’ per se, and perhaps this is because the whole Talmud is taken for granted as a ‘legal document’ despite being filled with data that one would be hard-pressed to define as law, in either the civil and criminal or even the ritual/liturgical sense. However, as we shall see, this absence of overtly ‘legal’ readings may also derive, in part, from changing understandings of the Talmud as law and how to read legal texts in Jewish feminist studies. However, since Hauptman was one of the pioneers in the field with a primary interest in law, it seems fitting to begin our discussion of feminist approaches to rabbinic law with Judith Hauptman’s 1998 work, Rereading the Rabbis: A Woman’s Voice.

**Judith Hauptman: Method**

Like her predecessors, Neusner and Wegner, Hauptman begins with the Mishnah in order to analyze rabbinic laws and evaluate their treatment of women. Notably, her conclusions run counter to those of Frymer-Kensky discussed earlier; Hauptman finds that the legal innovations of the rabbis living in the Greco-Roman period attempted to redress some of the injustices women suffered at the hands of biblical law. She concedes that the rabbis of the Mishnah and Gmara certainly continued to uphold patriarchy as it existed in biblical law, but suggests that they also began to introduce measures that would generally improve the lot of women.

Hauptman’s reading strategy begins with the *loci classici* – the places in the Torah and Talmud where a given topic is discussed – and compares them to see if the Rabbis of the Mishnah have made any significant changes. Given that the rabbis took the words of the Torah to be both divine and immutable, any place where they seem to be tinkering with the text is understandably noteworthy. After looking at these primary sources, she does a close reading of the surrounding cluster of mishnahs since “literary and legal contexts influence meaning” and then she looks at related rabbinic material from the same period (such as the Tosefta) and later (the Amoraic discussion in the Talmud). She wishes to determine how the Talmud sees and treats women and this drives the choice of texts she examines and the questions that she asks of them.
Based in this approach, she looks at texts pertaining to rape, marriage, divorce, adultery, menstrual laws, procreation, witnessing, inheritance, and general obligations to perform mitzvot, illustrating the ways in which the rabbis tried to alleviate some of the hardships and stringencies that biblical laws created. For instance, although the Torah allowed women to inherit only in the case where a man had no sons, the rabbis sought to protect daughters by introducing provisions that forced fathers to set aside significant sums for them as part of their dower in the case of the dissolution of their marriage. Although, as Peskowitz has illustrated, the sphere of control that a daughter would have over these monies would be diminished significantly once she became a wife – only part of this sum was off-limits to her spouse\textsuperscript{52} – it at least created a situation where daughters would be provided for from the father’s estate.

Although she sees herself as writing in the same vein of Ilana Pardes, of doing for the Talmud what Pardes strove to do for the Tanach, namely, finding ‘countertraditions’ that try to alleviate inequities for women in tannaitic literature, her work is nowhere near as interdisciplinary as the two other Jewish scholars we have looked at thus far.\textsuperscript{53} She rarely does comparative investigations of Greek, Roman, Mesopotamian or Sassanian law to examine how rabbinic legislation on women either conforms with or departs from parallel legal systems,\textsuperscript{54} and she does not make use of literary or psychoanalytic theory to explore either the structure or motives behind the framing of the text. While she does claim to read the text as a feminist, she does not define what this means, and balks at trying to fit her conclusions into “the framework of any particular feminist theory.”\textsuperscript{55}

\textbf{Not All Patriarchies Are Created Equal}

\textsuperscript{52} See Peskowitz, \textit{Spinning Fantasies}, 33-34.

\textsuperscript{53} This may be because of the perceived prejudices she noted in Talmudic studies at the time in which she was initially writing in which, redaction criticism and manuscript analysis were higher on the priority list than feminist critique. As well, the path of Jewish feminist bible scholars may have been made easier for them since Christian feminist theologians were also examining the same sources, bringing new approaches along with them. However since the field of Talmud still sees few scholars outside of Jewish Studies broaching it as a source, the insularity and homogeneity of methods may have persisted for a longer period of time.

\textsuperscript{54} Although she herself suggests this as an important area of further feminist research. See Hauptman, “Feminist Perspectives on Rabbinic Literature, 57.”

Hauptman suggests that the rabbinic system needs to be evaluated on its own terms rather than according to contemporary standards of equality and egalitarianism, but that merely excusing the *tannaim* (rabbis of the Mishnaic period) and *amoraim* (rabbis of the Gemara) by seeing them as products of their time likewise does them a disservice. She sees the rabbis’ patriarchy as a “benevolent” one, and takes issue with the notion that men in a position of dominance can never act in the interests of women. She realizes that some feminists may object to this stance and may refer to her work as apologetic for her “reasonably positive evaluation of rabbinic behaviour towards women,” but she insists that her approach is a “contextualized feminism” in that she recognizes the patriarchy of the rabbinic period as a norm and only tries to point out improvements in women’s legal status within that context.  

‘Ethical’ Progression of Halakha Over Time

Hauptman seems to have a positivist, evolutionary understanding of law and how it functions. Law is assumed to progress in a liberal fashion, is often expressed as having its own agency, and as something easily identifiable in the text that can be isolated from other material. As she asserts, “Law tends to develop over time in the direction of more humane treatment of the underprivileged.” She takes this idea for granted, neither citing any theoretical bases for this conclusion, nor attempting to explain how this change might occur. Hence, the changes that the rabbis made to the biblical system were made because “what was appropriate at an earlier time was no longer perceived of as ethical by later generations.” This belief in the ethical

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56 Ibid, 11.
57 Ibid., 5.
58 There is a vast body of literature in legal theory dealing with the forces and help bring about changes in the law. See Mauro Zamboni “From ‘Evolutionary theory and law’ to ‘Legal Evolutionary Theory’ ” in *German Law Journal* Vol. 9, 4 (2008): 515-546. Although Hauptman’s position is a blanket statement about law in general, and is not halakha-specific, the idea that halakha progresses over time to better reflect the divine will could be a variant on the notion of “continuing revelation,” which allows that the divine will continues to asserts itself through history and prevailing human interpretations and ideas. For a contemporary approach to this concept, which has its roots in the Mishnah, but was elaborated on by Rabbi Abraham Yitchak Kook (1865-1935), see Tamar Ross, *Expanding the Palace of Torah*, 197-212. However, as Rachel Adler points out, this notion of ‘progress’ in halakhic development tends to obscure the role that power and the propogation of certain interests play in establishing or suppressing certain halakhic positions. Plus, the evolution of halakha “may not correspond to what we think of as progress,” pointing to a trend in medieval halakha which allowed a court to punish someone – even by flogging – on the basis of reasonable cause without conclusive proof of guilt. See Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1998), 31-32.
progression of halakha over time has obvious implications for present-day practitioners, as Hauptman herself is only too aware. While she understands that Jewish feminists may want to reject halakha because they cannot abide by the social ideologies undergirding many of the rabbis’ decisions, she insists that the rabbis “were moving consistently to give women more ‘rights’...the direction in which they were headed, makes them fitting precursors for us.” 60 In other words, for Hauptman, the hermeneutical tactics of the early rabbis provide a blueprint for contemporary practitioners interested in instituting halakhic change.

**Following the Trajectory of the Law**

This is actually similar to the conception of religious law that we saw in Chapter 2 in Amina Wadud’s later work, who suggested that first the Prophet and later the jurists worked to restrict the applicability of Q 4:34 (the so-called ‘beating verse’), and that she along with other contemporary scholars who now reject the verse are simply “continuing the process of intervention between text and meaning.” 61 As she explain, “To say ‘no’ to this verse now simply exemplifies the process or trajectory throughout the history of textual interpretation and application.” 62 Frymer-Kensky similarly seems to conceive of law and law-makers as progressing to accommodate more contemporary notions of what is ethical. She suggests that while the message of the Torah is to strive to develop malkhut shomayim, or the perfect universe, on earth, “our vision of what the perfect universe would be changes over time...we must constantly refine this vision... and adjust the rules so that they continue to lead to the kingdom of God...For example, the Talmudic rabbis realized slavery cannot be part of the perfect universe, and so Rabbinic halakha did away with slavery.” 63 So Hauptman’s understanding of the

60 She sees the rabbis as serving as models for how to take the law and institute change to suit their own times. She does not suggest a particular methodology for updating the halakhic system, only that their precedent can be useful to us moderns, as a way of helping women “to become full-fledged members of the Jewish community,” Hauptman, *Rereading the Rabbis*, 249. Kecia Ali essentially makes this same point. See Ali, *Sexual Ethics and Islam*, pg. xx-xxi.

61 Wadud, *Inside the Gender Jihad*, 204.

62 Wadud, *Inside the Gender Jihad*, 204.

evolution of law appears to be a common notion among feminist exegetes. As we shall see below, both Fatima Mernissi and Kecia Ali likewise posit that contemporary practitioners should take their cue for reforming the law from the jurists.

Nonetheless, Hauptman sees her own focus on law as exceptional among feminist theorists. She laments the fact that very few feminist biblical exegetes focus on law, believing that if they did, they would surely see a positive change in women’s status from the biblical period to the time of the Mishnah. As already mentioned, she takes issue with Tikva Frymer-Kensky’s position that the status of women worsened in the early rabbinic period, claiming that if studies such as hers focused on changes in law rather than social status, Frymer-Kensky would reach different conclusions. While it is odd for Hauptman to posit that Frymer-Kensky does not explore issues of law in her work, given Hauptman’s understanding of law as progressing along a liberal continuum, it seems even more bizarre to suggest that law and social status are not linked in some way.

This line of reasoning comes up again in Hauptman’s introduction when she sets up the parameters of her project in *Rereading the Rabbis*. She suggests that she is limiting her discussion to halakhic rather than aggadic texts since she is interested “in the development of law – not attitudes – over time.” While she is correct in asserting that “every aggadic statement can be offset by another that says just the opposite,” it seems that some of these attitudes are precisely what informs the law, law is certainly not created in a vacuum. Besides which, although she maintains that halakhic texts are the only ones she is interested in, she liberally quotes from aggadic ones that illustrate the very “attitudes” she is supposedly not concerned with. Clearly then, de-linking the two genres of Talmudic literature and looking at them in isolation, is not as simple as Hauptman has made it seem.

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64 Hauptman, *Rereading the Rabbi*, 11.


66 For instance, in her chapter on menstrual laws, Hauptman includes snippets of the rabbis’ bragging about their sexual prowess in light of the claim that sons are the result when a woman reaches climax before her husband. Although the line between halakha and aggada is no longer as clear-cut as once assumed, (see Chapter 2, note 7) it would be difficult to make the case that these statements are intended to be legal in nature. Hauptman contemplates the reasons for the inclusion of this self-congratulatory “locker room talk” and concludes that “the existence of so many statements of this sort indicate that men, and probably also women…had a clear preference for sons over daughters.” She herself ties the promise of sons in these passages to the notion of a reward for fastidious observance.
Talmud as Literature: Why privilege readings of the Talmud as Law?

Nonetheless, Hauptman’s observation that few feminist analyses of rabbinic texts tackle the issues of law directly behooves further investigation. To be fair, many more women have published in the field of Rabbinics since Hauptman first made her comments, and several of these works explicitly deal with law.\(^6^7\) Indeed, several of the articles in the aforementioned introductory volume to the *Feminist Commentary on the Babylonian Talmud*, do directly approach women’s place within the halakhic system of the Bavli, in particular, their assumed inclusion or exclusion from a variety of festival-related commandments, such as the Passover seder and sitting in the sukkah.\(^6^8\)

But perhaps the fact that law is not explored in all of the articles in this first feminist mega-project involving the Talmud – the defining legal text in the Jewish religious canon – is also telling.\(^6^9\) Indeed, there has been a development in more recent feminist rabbinic study to read

of the laws of niddah (sexual abstinence during menstruation), illustrating the intimate relationship between societal attitudes and the formulation of halakha. See Judith Hauptman, *Rereading the Rabbis*, 163.

\(^6^7\) One notable example is Rochelle Millen’s *Women, Birth and Death in Jewish Law and Practice*, which like Rachel Biale’s book (see above) looks at Jewish law as it has been understood over time, beginning with the rabbinic framework and then investigating how these earlier traditions have been interpreted by the modern denominations of Judaism. While she too employs an incisive reading of Talmudic sources using gender as a category of analysis, her emphasis is also on the practical application and adaptation of these texts in the present era. See Rochelle Millen, *Women, Birth and Death in Jewish Law and Practice* (Lebanon, NH: Brandeis University Press, 2004).

\(^6^8\) While the authors themselves do not categorize their work as having a focus on law, the following articles seem preoccupied with law and women’s status: Hauptman’s own contribution to the volume compares rabbinic assumptions in the Mishnah, Tosefta and two Talmuds about the involvement of women in Passover obligations. Other articles include Catherine Hezser’s examination of the way women’s socio-legal status was defined as the same as or distinct from slaves and minors vis-a-vis their participation in Passover rites in the Bavli; Elizabeth Alexander’s study of conceptions of male and female difference implicit in the rabbinic exemption of women from positive, timebound commandments; Shulamit Valler’s essay explores women’s obligations regarding sitting the sukkah; Tamara Or surmises how much women might have informed the halakhic provisions concerning food preparation in Tractate Betzah; and Tirzah Meacham illustrates how the category of ‘misconstrued mitzvot’ or transgressions that occur accidentally while trying to fulfill a commandment, sheds light on the precarious status of the yevama, the woman acquired through levirate marriage, in the Talmud’s social system. See Tal Ilan, *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies*, eds. Tal Ilan, Tamara Or, Dorothea M. Salzer, Christiane Steuer and Irina Wandrey, (Tubingen: Mohr Siebeck, 2007).

\(^6^9\) Again, the methods of analysis are not reflected on explicitly, but the following works seem to engage depictions of gender and the feminine more so than analyses of law: Tal Ilan’s work explores the gendered meanings of dance in Tractate Ta’anit, while Judith Baskin analyzes conceptions of agency in the rabbis’ interpretation of the story of Esther in Tractate Megillah, and Charollette FonRobert looks at women’s roles in establishing the concept of neighbourhoods in Tractate Eruvin. See Tal Ilan, *A Feminist Commentary on the Babylonian Talmud: Introduction*
Talmudic texts as anything but law. Just two years prior to Hauptman’s publication of *Rereading the Rabbis*, David Kraemer was publishing a text entitled *Reading the Rabbis: the Talmud as Literature*. In it, David Kraemer, using rhetorical and reader-response theories, suggests that reading the Talmud through a ‘halakhic’ lens alone, in other words, reading it “to extract the established law from the Talmud’s deliberations,” leads one to miss other important factors about the construction of the text and how meaning is made within it. Pointing out that the Talmud is a highly crafted document with many rhetorical flourishes, he questions whether the Talmud should better be understood as literature and not merely as a text with the prime objective of conveying the law. As he provocatively asks,

“If the gemara is halakha, then why does it suggest nine proofs of the Mishnah’s law, five of which fail?...if the point is halakha, why quote more than one successful proof?... In fact, one proof is better because an additional proof forces us to ask what was wrong with the one before it.”

These sorts of questions about the Talmudic text would unsettle accepted readings of it as law in the academy and begin a trend of reading the Talmud as literature. As recently as 2009, Gail Susan Labovitz, would comment on this development, identifying her own work, *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature*, as part of a “growing line of rabbinic scholarship that reads [rabbinic] texts as forms of literary and cultural expression.”71 She would credit Kraemer as well as Miriam Peskowitz for recognizing the implications of freeing Talmudic texts from the constraints of a halakhic/legal reading.72 Indeed, Miriam Peskowitz would be one of the first feminist theorists to put a reading of the Talmud as literature to the service of feminist hermeneutics. As Peskowitz would demonstrate, by de-emphasizing legal interpretations and decision making in the Talmud, the scholar is able to read against the grain, and instead of adopting the text’s categories of male and female, one can instead begin to see the ways in which categories of gender are constructed and negotiated in the text. Citing feminist legal theory and post-structuralist notions of law as her influences, Peskowitz would

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understandably reach very different conclusions about the nature of law and its relationship to
gender in rabbinic texts than Judith Hauptman had before her.

Miriam Peskowitz: Setting her Method Apart from Other Feminist Scholars

In her 1998 book *Spinning Fantasies: Rabbis, Gender and History*, Peskowitz, a Professor of
Religion with a background in history, reveals the ways in which the rabbis of the Mishnah tried
to make both gender and law invisible, by having it suffuse every day, ordinary things, especially
labour, property, and the production of material goods. Using material, archaeological and
literary evidence of both textile production and the family economy in the Roman world as a
contrast to the depictions of these elements in rabbinic texts, Peskowitz is able to bring into sharp
relief the moments when the rabbis created gender distinctions – and laws associated with these
differences – that were anything but inevitable.

Peskowitz identifies her own approach as feminist, but also illustrates how it differs from some
other earlier types of feminist analyses, which a) highlighted cracks or moments of instability in
the rabbis’ legal foundations to emphasize either that the law is based on a faulty premise or to
reveal that the rabbinic understanding of women was not uniform; b) searched for rabbinic
heroes to serves as precedents for those interested in improving women’s position today; and c)
searched for the bottom line in order to analyze the status of women in the text.73 Peskowitz, on
the other hand lays bare the religious ideology embedded in the “the mundane and repetitive
events of everyday life,” in order to demonstrate how gender itself is constructed in rabbinic
texts.74

The difference between Peskowitz’s approach (one that focuses on the construction of gender in
the text) as compared to other feminist analyses (which highlight how women are treated in the
text’s bottom-line rulings, for instance) is best illustrated in Peskowitz’s discussion of a mishnah

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73 See Peskowitz, *Spinning Fantasies*, 42-44. As Peskowitz notes, all these approaches have the veiled intention of
discovering a helpful precedent for improving the status of women today.

which exempts a father from having to provide financially for his underage daughters while he is still alive. In *m. Ketubot* 4.4, to account for what seems to be an unfair practice, Rabbi Elazar Ben Azaryah explains that if girls were to receive maintenance both while their father is alive as well as after his death from his estate, sons would be unfairly disadvantaged, as they only inherit once their father has died. Peskowitz illustrates how this discussion of ‘fairness’ and ‘equity’ between sons and daughters elides the structural inequality already at play between male and female offspring. Biblically, girls are excluded from the family inheritance, and so any maintenance they are to receive from their father’s estate would be controlled by their brothers. As well, any money that minor daughters make prior to marriage is the property of their fathers while sons actually have sole ownership over their earnings. As Peskowitz herself explains, “how gender is constructed (as difference or as sameness) is a different question from whether or not these rulings result in positive or negative outcomes for sons and daughters. How gender is constructed is a prior issue to outcome...to find [Elazar’s] positions persuasive means that a reader has agreed not to question the way he constructs gender as a category.”75

While Hauptman in her discussion of inheritance does not specifically attend to Elazar’s comment regarding the ‘equal’ treatment of sons and daughters, as previously indicated, she does posit that inheritance is one of the areas where we see the greatest improvement in outcomes for women in comparison with the biblical period.76 Indeed, while both Hauptman and Peskowitz engage in feminist analyses of the text, they come at the imbrication of gender and law from different perspectives. Both Hauptman and Peskowitz highlight the moments when the *tannaim* consciously alter the meaning of a biblical passage in their making of law, but while Hauptman focuses on the ways in which these changes to the inherited tradition ameliorate the status of women, Peskowitz emphasizes how the making of law actually constitutes what it means to be a man and a woman in this new system. Hauptman’s analysis takes law as straightforward, as having practical implications, while Peskowitz, as we shall see, conceives of law as something less tangible and more pervasive than a closed juridical system imposed by rabbis on community members.

75 Peskowitz, *Spinning Fantasies*, 122.
Reading Talmudic Texts as ‘Legal Stories’

Peskowitz takes issue with the fact that “underwriting the current reading of early rabbinic texts is a positivist-inspired notion that law is straightforward in the meanings it makes, and that legal writing is not part of the same process of mediation and representation that characterizes other types of writing.” Asking why legal texts need to be limited to a legal reading, Peskowitz suggests that the status of the Talmud as authoritative has shielded it from all sorts of questions that theorists routinely ask about other historical texts. Following the work of feminist legal theorist Vicki Schultz who examined the way judicial legal narratives in sex discrimination cases actually constructed women’s conception of themselves as workers, Peskowitz prefers to read rabbinic texts as legal stories, which similarly construct identities. This allows her to remain cognizant of the fact that the text is a highly crafted literary document, a cultural product embedded with certain interpretive frameworks and assumptions. She contends that reading the Talmud as ‘halakha’ has tended to see the end result as “an outcome of the human condition and not as a process that constructs human subjects”.

Not only does she question why rabbinic texts need to be read as legal texts, an approach which emphasizes decision making and straightforward answers to specific questions, but she also asks us to rethink what we consider to be the law, or modes of social control in these texts. Peskowitz reminds us that, at the point in which the rabbis were compiling the Mishnah, they had few powers of enforcement and no ‘official’ authority, and there is little evidence that their laws were followed outside a small circle of elites. Nonetheless, that does not mean that they would have no means of exerting influence. While we tend to think of law as something vested in courts, judges, and other authoritative institutions, Peskowitz makes use of Foucauldian notions of ‘power’ to illustrate the ways in which rabbinic halakha was devised as natural, a part of the everyday landscape, and could be self-enforced through informal communal scrutiny and shaming.

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77 Peskowitz, Spinning Fantasies, 181, n.6.
78 She contends that this mystique extends even to those communities of Jews for whom the Talmud is no longer binding. See Peskowitz, Spinning Fantasies, 179, note 4.
80 Idem.
practices. Foucault’s work posited that contemporary social institutions (courts, prisons, hospitals, schools) along with other non-statist, more informal, modes of power work to construct and discipline subjects to the point where societal codes and expectations are virtually inscribed on our very bodies. Once these ideas are internalized, through daily repetitions in everyday life, there is no need for violent enforcement, but rather each person becomes responsible for his or her own surveillance. Peskowitz demonstrates that these ideas are very much at work in rabbinic texts about gossip. When women’s gossip about other women’s extramarital affairs is taken as reliable testimony in order for a husband to divorce his wife, women are employed to inflict social control over other women. Consequently, through community policing and other informal and repetitive modes of mutual surveillance (gossip, eavesdropping, real and imagined gazes), women become the law and are simultaneously formed by the law. As Peskowitz then suggests, the “legal stories” of the Talmud are not limited to the halakhic narratives or the unspoken assumptions embedded in its legal rulings and logic, but are also found in the very embodiment of the law in women’s actions, as they themselves become “repetitive halakhic texts.”

**Hauptman and Peskowitz: Two Distinct Conceptions of the ‘Work’ Done by Talmudic Halakha**

Consequently, we see two distinct approaches to religious law in the writings of Hauptman and Peskowitz. Hauptman reads Talmudic law looking for signs of practical improvement in the status and lives of late antique women. Peskowitz, on the other hand, reads the Mishah as a literary work, rather than a legal one, so as not to reinscribe its authority and normativity, especially vis-à-vis its categorizations of male and female. However, it would be a mistake to suggest that she is not interested in questions of law in the text. In fact, she shows us how law

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82 Interestingly enough, women’s testimony was generally not regarded as reliable in most instances (See chapter 1). However, since other mechanisms for dealing with a suspected adulteress, namely, the drinking bitter waters ritual, had fallen into disuse, the rabbis needed to rely on other sources of information about the intimate life of women. While the gossip of female spinners is enough proof for a man to divorce his wife, it is not deemed sufficiently reliable for her to be denied the payment of her ketubah, which would normally be the case in an instance of proven adultery. See Peskowitz, *Spinning Fantasies*, 134-138.

works to create gender in the text and also helps us push the boundaries of what constitutes law in the first place.

But despite Peskowitz’s critical examination of the way law functions in Mishnaic texts, unlike Hauptman, Wadud and Frymer-Kensky, she does not champion the classical legal tradition as a model for resolving ongoing gender inequities in contemporary religious practice. Although she is keenly aware that no text exists in a vacuum, and that foundational texts in particular are weighty precisely because they prefigure in the establishment of communal practices, still, Peskowitz sees no utility in “seeking ancient rabbis as friends for feminists” or as “authoritative all[ies] in arguments for increases in women’s rights”\textsuperscript{84} because these sort of arguments still obscure the structural inequalities embedded in the rationale behind the rules. However, as we shall see below, with their emphasis on texts developed in the distant past, neither scholar – not even Hauptman – offers a true recipe for reform to present-day women looking to improve their status and ritual access in their communities.

\textbf{Treatment of the Law Among Women Scholars of Hadith}

But what about female Hadith scholars? Do they do they also make the legal aspects of the Hadith a central part of their discourse and analysis or do they prefer to ignore the implications for law? Do they regard the Islamic legal tradition as providing a template for tackling discriminatory personal status and leadership laws in present-day Muslim communities? Or is classical jurisprudence seen as antiquated, as a super-structure with outdated norms that cannot simply be imposed on radically changed contexts from those in which its principles originated?

A closer examination of how the Hadith have been read in both academic as well as ‘traditional’ circles in the recent past is in order before we can proceed to the work of Fatima Mernissi and Sa’diyya Shaikh. As we shall see, dissecting notions of law in the Hadith corpus has not necessarily been the primary preoccupation of Western academics, but the legal weight of the Hadith has also been treated unevenly by leaders and adherents of modern Muslim reform movements. While some theological perspectives of the last several centuries privilege the

\textsuperscript{84} See Peskowitz, \textit{Spinning Fantasies}, 44.
Hadith over other sources of religious knowledge, others deny their significance altogether. As two of the very few female voices in contemporary Hadith Studies – in either traditional or academic circles – Mernissi and Shaikh both seem to take an in-between approach, with Mernissi using traditional tools to her own advantage from the comfort of the academy, and Shaikh, not entirely dismissing the importance of the Hadith as a basis of communal norms, yet rooting herself more firmly in the hermeneutical approaches of scholars outside of Islamic Studies.

Modern Hadith Criticism: Western Academic Approaches

Although the whole science of Hadith criticism was developed among Muslims to filter out fabricated hadiths, once the Hadith corpus came under the scrutiny of Western Orientalist scholars, who did not have the same investments in linking law and practice back to an exemplar, a new breed of scepticism was brought to bear on the tradition. For scholars such as Ignaz Goldziher, the main problem lay in the fact that the Hadith were compiled and written down centuries after the events they purported to describe; consequently, according to Goldziher, their content was more indicative of the political, theological and juridical landscape during the Ummayad and Abbassid periods than Islam during the time of the Prophet. While he believed that the Companions’ and Successors’ knowledge of the Prophet’s life served as the basis of the

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85 While fabricated reports became a problem immediately after the Prophet’s death, once Anas b. Malik, the last significant Companion of the Prophet had died around 711 CE, and there was no longer a living authority to corroborate the validity of a report, a method by which to separate the wheat from the chaff became even more necessary. Those interested in law, and for using the hadith as a source from which to derive law, wanted to be sure that the material upon which they were basing their rulings was sound. At this time, the nascent juridical schools were roughly divided into two camps, the ahl al-ra’y, the rationalists, who made ra’y, or informed opinion using inferential reasoning, their dominant approach, and their opponents, the ahl al-hadith, or traditionists, who posited that speculative reasoning was an inferior means of interpretation and adjudication when traditions associated with the precedent of the Prophet and his Companions were readily available. To bolster the hadith as the preferred authority for ascertaining community practice, the ahl al-hadith school developed a three-fold criteria for determining the credibility of a hadith, which involved making sure it had an isnad, or chain of transmission; that the isnad itself was beyond reproach (i.e., each transmitter was considered ‘upright [’adl], and ‘accurate’ [dabit], and there were no breaks or historical impossibilities in the chain); and that the report, and its transmitter, could be corroborated by the existence of a similar report by another transmitter. See Jonathan Brown, *Hadith: Muhammad’s Legacy in the Medieval and Modern World*, (London: Oneworld Publications, 2009), 77.

This emphasis on authenticity would eventually lead to the development of the sunan/ṣaḥīḥ collections of Hadith, which combined thematic organization with a preference for Prophetic hadith (as opposed to reports by Companions or Successors), and would only include hadith that were authentic, or saḥīḥ. Both Muhammad al-Bukhārī and Muslim ibn al-Hajaj would contribute to the new genre of hadith literature, and by the end of the tenth century they would achieve canonical status as the Ṣaḥīḥayn, or the two Ṣaḥīḥ collections. Although four other sunan collections would join those of Bukhārī and Muslim as canonical in the Sunni tradition, these works would never quite attain the same status as the Ṣaḥīḥayn. See Jonathan Brown, *The Canonization of Al-Bukhārī and Muslim*, (Leiden: Brill, 2011), 57.
reports, he held that, “anything which appear[ed] desireable to pious men was given by them a corroborating support reaching back to the Prophet.”

His conclusion was that the vast majority of the material was fabricated, so much so, that it was impossible to isolate the authentic kernel in the reports. In the 1950’s, Joseph Schacht would build on Goldziher’s position, suggesting that the legal hadith in particular were reflective of the jurisprudence of the different schools more so than the precedent of the Prophet. Since few early legal works actually contained hadiths linking back to the Prophet himself, Schacht took this to mean that reports in later legal compendia that did extend all the way to the Prophet were back-dated fabrications. Schacht, and later, G.H.A. Juynboll, would focus on the mass dissemination of hadith with multiple isnads for the same or similar reports beginning in the 8th and 9th centuries as compared to single isnads available at an earlier point in time and would take this to be indicative of forgeries by a common transmitter, known as ‘the Common Link’, who could at least indicate when a tradition emerged. Although Goldziher, Schacht and other early Islamicists had raised questions about the reliability of the Hadith, as Harald Motzki has pointed out, they never questioned the basic Islamic beliefs embedded in those sources regarding the compilation of the Qur’an and the prophethood of Muhammad. However, in the 1970’s Michael Cook and Patricia Crone would take doubts about the authenticity of hadith to an extreme and posit an entirely different reading of Islamic history than the one promoted by Muslims. For them, the


87 Although the scholars who would come after Goldziher would often disagree with him, his influential position on Hadith is still deeply felt in the academy today where questions of authenticity continue to dominate the academic discourse. This is evident in the 2009 Routledge series on Hadith, where one whole volume in the 4 volume set is dedicated entirely to dealing with questions of authenticity. See *Hadith*, part of the *Critical Concepts in Islamic Studies Series*, ed. Mustafa Shah (London: Routledge, 2009), Vol. I

88 See Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Claredon Press, 1959), 175. Juynboll would also call into question the very modes of corroboration used by traditional Muslim scholars by contending that investigating individual transmitters and comparing reports was fruitless, since whole isnads could have been easily fabricated to appear authentic. See Juynboll, *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early Hadith* (Cambridge: Cambridge University Press, 2008).


90 Since none of their conclusions is taken seriously by any of the Muslim women scholars in this study, I will not dwell on the findings of Cook and Crone, but since they are the outgrowth of a revisionist trend in Western Islamic Studies, I will catalogue them briefly here. Privileging 7th century Christian sources over Muslim ones which do not appear earlier than the mid-8th century, Cook and Crone concluded that Islam was really originally a concoction of Arabian tribesmen who, caught up in a form of Jewish messianism, sought to free the Holy Land from the
entire corpus of Hadith was entirely inauthentic and even the Common Links were not evidence of any sort of historicity pertaining to the evolution of a tradition.\(^\text{91}\) However, Harald Motzki would combine academic isnad analysis with emerging *matn*, or content, criticism and succeed in destabilizing some of the extreme scepticism that had taken root in Western Hadith scholarship.\(^\text{92}\) By looking at a much wider selection of hadith than either Schacht or Juynboll, including those found in less widely available collections and other rare manuscripts, Motzki would indicate that Common Links occurred earlier than originally thought – in fact, usually at the level of a Companion – and that identical isnads tended to reveal identical content, while slightly different isnads would result in variations in terms of the wording of the *matn*.\(^\text{93}\)

Consequently, if there were wide variations in the *matn* of a singular report derived from the same Common Link, then this could be indicative of an error or a fabrication. While Motzki did not rule out the possibility that some reports could be fabricated, he illustrated that one need not automatically dismiss the idea that a transmitter heard the report from the person he or she cited and that the report could indeed go back as far as the first generation after the Prophet.\(^\text{94}\)

Notably, neither Mernissi nor Shaikh directly refer to any of these landmark works in the academic study of Hadith in their own writings.\(^\text{95}\) But their respective analyses do not exactly

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\(^{91}\) Cook posited that in many cases, the eschatological ideas in the *matn* of a hadith could be proven to be of much later provenance than the Common Link transmitter, so it too was not a useful tool for determining even when a tradition emerged. See Cook, “Eschatology and the Dating of Traditions” in *Early Muslim Dogma: A Source-Critical Study* (Cambridge: Cambridge University Press, 1981).

\(^{92}\) Although it would never become a widely popular technique, the examination of the content of a hadith to determine its authenticity was not entirely new. Indeed, the Mutazilites scoffed at verification through isnads alone and advocated for the dismissal of hadith on the basis of a questionable or highly suspicious *matn*. But Jonathan Brown has illustrated that even Bukhārī would at times exclude a report for its unlikely content. See Brown, *Hadith*, 97.

\(^{93}\) See Motzki, “The Collection of the Qur’an”, 27.

\(^{94}\) Motzki also points out that the appearance of a report in a collection does not mean that the report itself did not have a long life before being committed to writing. See Motzki, “The Collection of the Qur’an”, 21.

\(^{95}\) Although Mernissi does cite the work of Goldziher and Schacht in other contexts to provide background on Muslim history and Islamic law. See Fatima Mernissi, *The Veil and the Male Elite*, 213, 199.
map onto the writings of ‘traditional’ Muslim scholars of the last several centuries either, although traces of these approaches are sometimes discernible too. As we shall see, populist approaches to the Hadith which tend to down-grade the force of classical jurisprudence seem to run counter to Mernissi’s overall strategy, and while Shaikh’s reading sidelines legal authority and empowers lay interpreters, she would likely regard feminist theorists rather than Salafists as her scholarly influences. Nonetheless, there is a point of intersection between ‘traditional’ and academic writings on Hadith. As we shall see, questions pertaining to the authenticity of the Hadith cut across both these distinct and vastly different scholarly worlds; as such, they will inevitably surface in the works of Mernissi and Shaikh as well.

**Muslim Reformist Approaches to Hadith**

While in some instances, the early Orientalist attacks described above served as a catalyst for reform in Muslim communities, in most cases, there were already internal dynamics at work in Muslim re-assessment of the Hadith corpus. Indeed, Islamic revival and reform movements since the 18th century have each tried to sort out how Islam should respond to the technological, scientific, cultural and political changes ushered in by modernity; since the Hadith were always such a pivotal tool in polemical debates, it is understandable that a re-examination of this rich source would become a defining feature for many of these revivalist movements.

Although their approaches are different, most modern Islamic reform movements claim to model themselves on the pious *Salaf*, the first three generations closest to the Prophet, and seek a return to what they regard as the golden age of Islam, a time before the canonization of the six Hadith collections, the infiltration and assimilation of ‘non-Islamic’ ideas into daily practice, the ossification of the legal system and the expectation of *taqlid*, or doctrinal adherence, from lower-

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96 On Salafism, see pg. 35 below. Kecia Ali does see certain groups of Salafists as having shared concerns with feminists, particularly vis-a-vis the sidelining of the Islamic legal tradition. See *Sexual Ethics and Islam*, xx.

97 A re-examination of Islamic legal foundations, scholarly authority, and customary practices in this period would be precipitated by two key elements: the overlapping collapse of several of the once mighty Muslim empires (the Mughal, Ottoman, and Safavid), and the Muslim encounter with colonialism and its attendant Orientalist writings. While often it is the encounter with Western ideas that is portrayed as instigating these reform movements, as Daniel Brown has illustrated, the seeds of change were already in the works in Muslim societies before the arrival of the Europeans. See Daniel Brown, *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1996), 21.
level ‘ulamā’ and lay practitioners. Many of the reform movements of the period would identify Shah Wali Allah, the 18th century Indian revivalist, as their intellectual forbearer. Wali Allah would champion looking beyond the established law of the four madhabs, re-examining and re-asserting the importance of non-canonical Hadith collections such as Malik’s Muwatta, and returning to ijtihād of the Qur’an itself as a way to combat unsavoury customary practices. Wali Allah’s ideas would spawn several distinct but related movements: the Ahl-i-Hadith School, the Salafiyya movement (traditional and modernist), and the Ahl-e-Qur’an School.

Ahl-i-hadith School

Either unaware of or undeterred by Orientalist criticisms of the hadith, the Ahl-i-hadith felt that the whole juristic enterprise as understood in the four schools was suspect and that the Sunna, as recorded in authentic hadith, was the only reliable source of law after the Qur’an. Unlike other reformist schools that would emerge in this period, the Ahl-i-Hadith believed that the Saḥīḥ collections, especially Bukhārī and Muslim, were to be uncritically and literally adhered to, as these early Hadith scholars had access to information no longer available to

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98 According to Hallaq, only a mujtahid, or a higher-ranking, master-jurist was allow to engage in ijtihād. Anyone else -- from less esteemed jurists to lay practitioners -- was a muqallid, someone who practices taqlid, “It is [the layperson’s] inability to reason independently on the basis of the revealed texts that consigns them to the same camp as jurist- muqallids. The layman’s access to the law can be had only through referring to the opinion of the mujtahid; this opinion is transmitted to them by the jurist-muqallid and they have no choice but to follow it”. See Hallaq, Sharia, 111.

99 While these sentiments would be felt throughout the Muslim world, it is perhaps not so surprising that they would gain traction first in India, where the ‘ulamā’’s traditional role in matters of law and education was weakening the fastest. As Brown explains, the ‘ulamā’ in Egypt and Syria did not become disenfranchised until much later. See Daniel Brown, Rethinking Tradition, 30-31.

100 See John Obert Voll, Islam, Continuity and Change in the Modern World (New York: Syracuse University Press, 1994), 58-61. Among customary practices that were criticized, putting an end to visitations to the tombs of saints was often at the top of the list for reformers. Nonetheless, given his own Sufi background, Shah Wali Allah did exhibit more tolerance towards these types of practices than other reformers, such as Muhammad Ibn abd al’Wahab. See Roel Meijer, Global Salafism, 4.

101 Shah Wali Allah’s rejection of taqlid and re-evaluation of the importance of Hadith would lead to the establishment of the Ahl-i-Hadith school by some of his followers Key figures in the Ahl-i-Hadith School were Siddiq Hasan Kahn (d. 1890) and Nazi Husayn Dihlawi (d. 1902).
modern practitioners. This school would never have widespread appeal, and would not make any inroads outside of the Indian sub-continent. However, it does account for the revered status given to the *Saḥīḥ*Saḥīḥayn (‘the two *Saḥīḥ*Saḥīḥs’) in some contemporary circles, and perhaps provides a deeper context for understanding why, as we shall see below, Mernissi’s critique of Bukhārī could not be regarded lightly by community leaders.

**Salafism**

A related, but not identical school known as the *Salafiyya* movement would also emerge in this period. But while the Ahl-i-Hadith regarded the canonical Hadith as sacrosanct, the Salafis were willing to take a much more critical look at the Hadith. Nonetheless, the Salafis are not a monolithic group and by the end of the 18th century, two distinct trends had emerged, one traditionalist and the other modernist, which shall be discussed below. Traditionalist Salafi schools would emerge in Yemen, Syria, and India, although perhaps the most recognized name associated with the movement is the Arabian-born Muhammad b. Abd al-Wahab. While even amongst themselves, Traditionalist Salafis hold a wide range of beliefs, generally speaking, the movement emphasizes the practice of the Prophet as the standard of communal behaviour.

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102 In essence, the practice of the Ahl-i-hadith did not depart much from Hanafi law, the dominant school in the Indian sub-continent. However, their literalist readings of the Hadith would occasionally result in marked differences in matters of ritual. See Daniel Brown, *Rethinking Tradition*, 28-29.

103 These terms are borrowed from Jonathan Brown, *Hadith*, 243. As Brown himself admits, the terms are problematic as they are inimical to the groups themselves. For more on the fragmentation surrounding the term ‘salafism’ as it pertains to modern movements, see Roel Meijer, *Global Salafism: Islam’s new religious movement* (New York: Columbia University Press, 2009), 4-5.

104 See Roel Meijer, *Global Salafism*, 4-5. Like many among the Salafiyya, Al-Wahab engaged in a literalist understanding of hadith, emphasized *tawḥīd* (the unity of God) as a central Islamic doctrine, and labelled as heretical anyone who engaged in customary practices. But from a political perspective, al-Wahab is most notorious for successfully cementing the power of the ‘ulamā’ to that of the ruling dynasty. This is distinct among the reformist movements, which otherwise tended to be more quietist and distanced themselves from state operations. To distinguish more quietist Salafi groups from those oriented towards bringing down “insufficiently Islamic governments”, some have suggested the term ‘Jihadist Salafism’ to describe the latter. See Mohamed-Ali Adraoui, “Purist Salafism in France” *Isim Review* 21, (Spring 2008): 12-13. For a theory that violent Salafism arose due to a failure of more moderately political Islamist movements and the de-culturization and de-territorialization of Muslims in an increasingly globalized world, see Olivier Roy, *The Failure of Political Islam*, trans. Carol Volk (Cambridge, MA: Harvard University Press, 1996), 25; Olivier Roy, *Holy Ignorance: When Religion and Culture Part Ways*, trans. Ros Schwartz (New York: Columbia University Press, 2010), 105. For an opposing view that attributes Salafism’s popularity to its claims to religious certainty and emphasis on textually-based forms of authority, see Bernard Haykel, “On the Nature of Salafi Thought and Action” in *Global Salafism: Islam’s new religious movement* (New York: Columbia University Press, 2009), 33-57.

105 Indeed, those associated with different regions have yielded polarizing conclusions. See Meijer, *Global Salafism*, 6, and Brown, *Hadith*, 259-260 where rival leaders of more traditional salafist groups accuse one another of heresy.
and belief and upholds the Sunna as a form of revelation alongside the Qur’an. But despite the centrality of the Sunna in Traditional Salafi theology, adherents suggest that Hadith criticism is still open and that today’s scholars, who have access to many more collections of Hadith than their classical predecessors, are better positioned to become proficient in the craft. Hence, they are not above rejecting hadith in the six canonical collections or rendering as authentic hadith that were originally dismissed by earlier scholars. While matn analysis, or an examination of a hadith’s content, is not ignored by Traditionalist Salafis, like the original ahl al-hadith school, their main criterion for authentication of a hadith is verification of its isnad. As noted above, this preoccupation with isnads actually puts them in conversation with the majority of academic work that continues to be done in the field of Hadith Criticism. Nonetheless, their primary concerns are not academic, but rather reformist; like their Modernist and Qur’an-only counterparts (see below), they harbour a deep scepticism about ijmā’ as a source of law, but advocate a belief that ijtihād is accessible to all. Indeed, at the core of Traditional Salafi beliefs is the radical notion that, “a qualified person need not rely on authorities, and that texts can be approached without intermediary.” As we shall see, this idea abstracted from the rest of Salafism’s teachings will have far-reaching influence; we will note below how it is at the heart of Shaikh’s notion of ‘embodied tafsīr’, and how, in Chapter 5, it wends its way through the sentiments of contemporary laywomen living in Toronto.

106 Like the 14th century Hanbali scholar Ibn Taymiyya who focused on the first generations of Muslims as the most accurate source for interpreting the Qur’an and the Sunna, the Traditionalist Salafis of the 18th century saw the Sunna, as embodied in Hadith, as a way to return to the original ‘purity’ of Islam.

107 However, they will not entertain weak hadith as sound and are intolerant of the lax criteria used by later traditionists, which elevated several traditions to the status of mutawatir (recurrent) or mashhur (widespread). See Jonathan Brown, Hadith, 258-259. After 1100, once all the major compilations of Sunni hadith had been established, any hadith not already recorded in an existing collection of hadith was automatically deemed a forgery. But while one could not devise a hadith out of thin air, the status of one the hadiths in an existing work could change, either because a new or better isnad had been discovered or because of a changing concept of what constituted an authentic hadith. Indeed, later Hadith scholars, such as al-Suyuti (d. 1505), would capitalize on the ambiguous definition of a mutawatir, or recurrent, report and deem several hundred ahadi, or solitary, hadiths as mutawatir simply because they were transmitted by ten Companions after the Prophet. See Jonathan Brown, Hadith, 109. On the other hand, as we shall see below in the Hadith analysis undertaken by Fatima Mernissi, the converse was not true -- once a hadith had been recognized as authentic in the Sahihayn (the two Sahih collections of Bukhari and Muslim), it was much more controversial to attempt to dislodge it.


109 See Daniel Brown, Rethinking Tradition, 32. As we shall see, this idea abstracted from the rest of Salafism’s teachings will have far-reaching influence; we will note in Chapter 5 how it wends its way through the sentiments of contemporary laywomen living in Toronto.
contemporary laywomen living in Toronto, especially among those with the highest degrees of textual confidence.

Modernist Salafism: Redefining the Role of Mutawatir Hadith

The purist, pro-hadith stance taken by the Traditionalist Salafis is more qualified amongst Modernist Salafis, who recognize that the Hadith are essential to piecing together the history of a Muslim communal practice, but at the same time, have been influenced by Orientalist allegations that many forgeries existed. In an attempt to balance these concerns, Sayyid Ahmad Khan (d. 1898) developed a new methodology for ascertaining authentic from fabricated reports by engaging in a Hanafi-Mutazilite-Western Orientalist hybrid of matn criticism. He rejected any reports that belittled the Prophet, contradicted the Qurʾan, or were incompatible with modern science, as well as reports transmitted by non-legal specialists.\(^\text{110}\) According to Khan, only the very small number of hadith that were \textit{mutawatir}, or recurrent - Khan claimed there were only five of these - and hadith pertaining to religious matters required strict obedience.\(^\text{111}\) Khan’s approach would find similar expressions in Egypt and Syria in the figures of Mohammed Abduh and Rashid Rida.\(^\text{112}\) Interestingly enough, both Abduh and Rida’s suspicion of hadith would not

\(^{110}\) This was the common practice among the Hanafis. See Jonathan Brown, \textit{Hadith}, 155.

\(^{111}\) A \textit{mutawatir} hadith was one that had a significant, though unspecified number of Companions who cited the same tradition to a significant number in the generation succeeding them, either in exactly the same words or in different words that convey precisely the same content. Since the information was passed on through so many different channels, it was suggested that there could be no doubt as to the report’s accuracy. The transmission of the Qurʾan was seen as having been adequately passed on in such large numbers to be beyond a doubt, but the majority of hadith could not claim the same pedigree. Most jurists required a minimum of five chains of transmission at each stage in the narration for a report to yield certain, automatic knowledge and qualify as mutawatir, but for some jurists, this number went as high as 70 or even 313. Consequently, few reports, if any, would meet the standards of being mutawatir. All other reports then were considered ahadi, which could only provide probable knowledge (\textit{zann}). See Hallaq, \textit{A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh} (Cambridge: Cambridge University Press, 1999), 61. While some Hanafi scholars would suggest that ahadi reports could not serve as the basis for an issue of great importance or wide applicability in Islamic law, by the 11\(^{th}\) century, the majority of jurists would recognize both mutawatir and ahadi hadith as providing a sound bases for establishing legal practice of any type. See Jonathan Brown, \textit{Hadith}, 155.

\(^{112}\) Abduh, who would go on to become Egypt’s chief mufti in 1899, suggested that while non-mutawatir hadiths were optional, only mutawatir hadiths were binding on the community. He also rejected any hadith that did not agree with modern conceptions of rationality; that meant that hadith predicting the future, the end of days, and all the \textit{israiliyat} traditions (material derived from Jewish and Christian sources) were out. Rida, Abduh’s star student, through his journal \textit{al-Manar}, would suggest that all hadith pertaining to practical and essential religious matters such as prayer and pilgrimage were tantamount to mutawatir hadith, while anything involving \textit{adab}, or etiquette, was ahadi and hence, unreliable. See Jonathan Brown, \textit{Hadith}, 254-255.
extend to a wholesale rejection of later Islamic jurisprudence. On the contrary, strategies such as matn criticism employed by the jurists in their understanding of hadith were seen as a model. But rather than resorting to taqlid, both Abduh and Rida would advocate for talfiq, meaning ‘piecing together’, which allowed one to choose from amongst all the opinions in any of the four schools, including minority opinions. This approach of appealing to the juristic tradition to re-examine the Hadith will also be recognizable in Mernissi’s analysis below.

**Ahl-e Qur’an: The ‘Qur’an-only’ School**

While Modernist Salafis rejected a large component of the Hadith corpus as unreliable, they did not deny the importance of Prophetic reports altogether. Similarly, the great revivalist Shah Wali Allah merely suggested a re-examination of pre-canonized hadith. Nonetheless, the modernist writer Chiragh ‘Ali, a contemporary of Sayid Ahmad Khan, would embrace Orientalist critiques of Hadith and would interpret Shah Wali Allah’s vision to be tantamount to a complete denunciation of all sources of law other than the Qur’an and ijtihād. ‘Ali’s ideas would later serve as the basis of the highly influential Ahl-e Qur’an movement started by Abdallah Chakralawi and Khwaja Ahmad Din Amrisari at the turn of the 20th century.

Rejecting the Hadith as embarrassing fabrications and isnad analysis as a useless measure of historical authenticity, they believed that the Qur’an was sufficient for working out the day-to-day life of a Muslim, and that even the details of little covered topics such as prayer or inheritance could be derived from the Qur’an. Later proponents went so far as to suggest that gaps pertaining to Islamic practice were intentional in the Qur’an and that God intended humans to use reason to respond to new circumstances and time periods. While the ‘Qur’an-only’

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114 In the later half if the twentieth century, this approach would also be associated with Egyptian jurist Mohammed al-Ghazali. See Brown, *Hadith*, 262.

school would receive its widest support in India, it would also make an appearance in Egypt through the writings of Muhammad Tawfiq Sidqi (d. 1920) and Mahmud Abu Rayya (d. 1970).

**Qur’an-only Approach and Islamic Feminism**

Several contemporary Muslim academics, while not explicitly self-defining as ‘Qur’an-only’ Muslims, seem sympathetic to the movement’s philosophy by virtue of focusing on the Qur’an, to the exclusion of other sources in their writings. Islamic feminists in particular are often associated with the Ahl-e Qur’an school; Amina Wadud is labelled this way quite often, and although I have yet to come across the term as applied to Asma Barlas, as I have already pointed out, her work clearly privileges the Qur’an and has an ambivalent relationship with Hadith to say the least. But are these reservations shared by most contemporary Muslim women scholars? Given the unique relationship that women had in the transmission of Hadith to begin with, one would expect that this genre of religious literature would be a rich area of interest among Muslim women exegetes in particular. However, as we shall see, this has not exactly been the case.

**Contemporary Women Scholars and Hadith Studies**

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116 See for example, articles by GF Haddad on the livingislam.org website (accessed 28 February 2012) which describe Wadud and Riffat Hasan as ‘Qur’an-only Feminists’. See also Jonathan Brown, Hadith, 248; and Kecia Ali, Sexual Ethics and Islam, xx where she refers to “Qur’an-only feminists or pro-hadith Salafis” as missing much for refusing to examine the Islamic legal tradition.

117 As was mentioned in the Introduction, women close to the Prophet were early on considered significant sources of Hadith. But women’s early participation in the enterprise of Hadith would secure them a position in the ongoing collection and transmission of reports throughout the Middle Ages. Indeed, even after the canonization of the six books of Hadith, oral transmissions of Hadith (and even whole books of Hadith) through living isnads that extended from the Prophet up to the present moment remained popular and coveted, since such a recitation allowed practitioners to feel connected to the Prophet in real time. While a shorter isnad may not have necessarily affected the authenticity or legal weight of a particular hadith, the fewer links in the chain to the Prophet (known as an ‘ali, or elevated isnad) made a hadith more valuable, and since women tended to live longer than men (and could therefore have heard transmissions from older, more esteemed traditionists), they were often sought out by younger students to provide these more exalted transmissions. See Jonathan Brown, Hadith, 49. For an analysis of the significance of women’s participation in Hadith collection and whether this involved passive or active study, see Introduction, note 10.
Indeed, it is noteworthy that today few contemporary Muslim women have made Hadith their primary area of scholarship. A case in point regarding the under-representation of women scholars in contemporary Hadith research: out of sixty-one articles in Routledge’s four-volume series on hadith from 2009, only eleven are written by women. Of these, two articles (by ‘A’isha Geissinger and Asma Sayeed) deal with women as transmitters of Hadith, and two articles explore how women are portrayed in the Hadith, with only one – that of Sa’diyya Shaikh – describing its methodology as explicitly “feminist”. Given the amount of attention that “misogynist” hadith receive in the writings of contemporary Muslim academics, including an esteemed male scholar such as Khaled Abou El-Fadl, it is interesting that so few articles in this series seem to address those concerns directly. As we have seen, both Wadud and Barlas retreat from the importance of the traditions, preferring to focus on the Qur’an, and Wadud herself has lamented the “scarcity of existing research reinterpreting ahadith” and has put out a call to other academics to re-examine these from a gender-inclusive perspective. As mentioned earlier, since the historical validity of the Hadith and their reliability as a religious source dominates the discourse in contemporary Islamic Studies, it is perhaps not surprising that both Fatima Mernissi and Sa’diyya Shaikh, two women scholars who do tackle Hadith

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118 The history and current state of Muslim women’s participation in the contemporary discipline of ‘Islamic Studies’ (often embedded in Near and Middle Eastern Studies Departments) and its various sub-fields (law, politics, literature, history, philosophy, etc.) is an under-researched area. Although the study of Islam in Western universities goes back to the 19th century, it is only in the last half century due to increased immigration by Muslims to Europe and North America that Muslims themselves beginning to engage with and become immersed in the study of Islam in the academy. For an analysis of the emergence of Islamic Studies in European and North American universities, see Azim Nanji, Mapping Islamic Studies: Genealogy, Continuity and Change (Berlin: Mouton de Gruyter, 1997). See in particular, page 5, where women are mentioned in passing as not having contributed much to the field in the early 20th century. For a more in-depth look at Islam as taught in American universities and the challenges of teaching on women and Islam in particular, see Zayn Kassam, “Engendering and Experience: Teaching a Course on Women and Islam” in Teaching Islam, ed. Brandon Wheeler (New York; Oxford University Press, 2003). For an analysis of the state of the field of “Muslim Women’s Studies”, see Wadud, Inside the Gender Jihad, 55-86.


120 Sa’diyya Shaikh’s work will be described below.

121 See Khaled Abou El-Fadl, Speaking in God’s Name: Islamic Law, Authority and Women (Oxford: OneWorld, 2001).

122 Wadud, Inside the Gender Jihad, 7.

analysis in a more in-depth way, cannot escape engaging with the authenticity question as well.\textsuperscript{124} However, as we shall see, they address this problem in very different and strategic ways.

**Fatima Mernissi: Background and Method**

A sociologist by training, Fatima Mernissi started her academic career by investigating Moroccan development policies and their impact on rural and illiterate women. However, the 1987 publication of *The Veil and the Male Elite* marks a shift in her research;\textsuperscript{125} for the next several years, she would produce a series of works which have been characterized by others as the first major ‘Islamic feminist’ texts.\textsuperscript{126} Although like Wadud and Barlas, Mernissi has never used the feminist label to refer to herself, others have certainly described her work that way. Badran refers to her as “one of the earliest to articulate Islamic feminism without taking on an Islamic feminist identity.”\textsuperscript{127} Similarly, Raja Rhouni insists that Mernissi only avoids the term because of her “avowed aversion of labels and theoretical framing.”\textsuperscript{128} Accordingly, Rhouni retains the descriptor ‘Islamic feminist’ to refer to Mernissi, believing it is a helpful analytical category for illuminating Mernissi’s “speaking position.”\textsuperscript{129}

\hspace{0.5cm} \textsuperscript{124} This is true of Geissinger’s work on ‘A’isha as an exegetical authority as well. Although she acknowledges the debates regarding the fabrication of reports, her work is more concerned with the textual function and reception that reports by women serve in traditional Qur’anic commentaries. See Geissinger, “The Exegetical Traditions of ‘A’isha,”\textsuperscript{1}, especially note 2.

\hspace{0.5cm} \textsuperscript{125} The book first appeared until the French title *Harem Politique* in 1987. It would be published in English under the title *The Veil and the Male Elite* in 1991.

\hspace{0.5cm} \textsuperscript{126} Raja Rhouni, *Secular and Islamic Feminist Critiques in the Work of Fatima Mernissi* (Leiden: Brill, 2010), 11-12.

\hspace{0.5cm} \textsuperscript{127} See Badran, “Islamic Feminism: What’s In a Name” *Al-Ahram Weekly Online*, Issue 569, 17-23 January 2002, (accessed 15 January 2005) <http://weekly.ahram.org.eg/2002/569/cu1.htm>.

\hspace{0.5cm} \textsuperscript{128} See Raja Rhouni, *Secular and Islamic Feminist Critiques*, 21. Rhouni, in her book, distinguishes between Mernissi’s secularist writings on Islam, in which the tradition is framed as thoroughly misogynistic, and her Islamic feminist writings, which take a more tempered approach to Islam through the examination of its key texts. By the time *The Veil and the Male Elite* came out, Mernissi, according to Rhouni had “become aware of the difficulty of using a secularist feminist discourse to advocate women’s rights in the Moroccan context and the necessity to adjust her feminist language to more indigenous forms.” See *Secular and Islamic Feminist Critiques*, 196-197.

\hspace{0.5cm} \textsuperscript{129} See Raja Rhouni, *Secular and Islamic Feminist Critiques*, 21. Rhouni notes that Mernissi uses the adjective to describe her method for the first time in her 1996 work *Women’s Rebellion and Islamic Memory*, where she explains that “the exploration of the Muslim heritage, by way of films, books and feminist readings of the past, remains one
In the *The Veil and the Male Elite*, Mernissi herself describes her foray into Islamic religious literature as an attempt to recover the “egalitarian message” of the Prophet, which has been veiled and obscured over time. In writing the book, she hoped to illustrate that women’s rights are not in conflict with “the Koran nor the Prophet, nor the Islamic tradition,” but rather with an elite faction of men “trying to convince us that their egotistic, highly subjective, and mediocre view of culture and society has a sacred basis.” In her acknowledgements, Mernissi explains that she conceived of the idea for *The Veil and the Male Elite* after listening to a speech on the importance of believers engaging directly with religious texts by her colleague Alem Moulay Ahmed al-Khamlichi, a professor of Islamic law. Convinced of the necessity for “a new interpretation of these texts”, Mernissi would take her colleague’s suggestion to heart and embark on a study of “the religious texts that everybody knows but no one really probes.”

Although Mernissi would also revisit the Qur’anic verses pertaining to hijab and violence against women (i.e., Q 4:34) in *The Veil and the Male Elite*, it is perhaps for her systematic deconstruction of the Hadith, that her work is best known. After patrons at her

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132 See Mernissi, *The Veil and the Male Elite*, x. For more on Khamlichi’s influence on Mernissi and his involvement in reformation of the Moudawana, the Moroccan Family Law Code, see Rhouni, *Secular and Islamic Critiques*, 205.


134 See Mernissi, *The Veil and the Male Elite*, 85-101, where she does a linguistic, social and historical analysis of the hijab and the circumstances in which the hijab verse “descended”, concluding that the veil or curtain described in verse Q 53:33 was intended to separate the public from the private space in the Prophet’s home and not necessarily to engender segregation between the sexes. She also notes the Sufi use of the hijab as a state that obscures one’s knowledge of the divine and suggests that the resurgence of the tradition in the 20th century is triggered by encounters with the West and is a playing out of a Muslim identity crisis on the bodies of women. It has been noted by Rhouni, Mai Yamani, etc. that Mernissi’s characterization of the veil in this way leaves no room for a discourse of choice when it comes to present-day women adopting the veil. See Rhouni, *Secular and Islamic Feminist Critiques*, 235.

135 See Mernissi, *The Veil and the Male Elite*, 153-160, where she turns to the writings of Ibn Sa’d, Tabari, and the present-day scholar Mahmud Shakir, to challenge some contemporary interpretations of the verse and to illustrate that the Prophet himself did not support violence against one’s spouse as a response to marital discord.

136 The significance of her hadith work has been noted by Jonathan Brown, Sa’diya Shaikh, Anne Sophie Roald and Lamia Ben Yousef Zayzafoon. While Brown calls her navigation of the Abu Bakra tradition “a brilliant turn”,

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neighbourhood grocery store respond to her query about the suitability of Muslim women as leaders by quoting back to her a hadith which effectively disqualifies women from vying for political office, Mernissi decides to probe the origins of the hadith herself, “to better understand its extraordinary power over the ordinary citizens of a modern state.”\(^\text{137}\) As Mernissi notes, the hadith in question – “Those who entrust their affairs to a woman will never know prosperity”\(^\text{138}\) – is cited as authentic by “authorities known for their scholarly rigour” such as Ibn Hanbal in his \textit{Musnad} and al-Bukhārī in his \textit{Saḥīḥ Saḥīḥ}.\(^\text{139}\)

\textbf{Mernissi as Insider/Outsider: A Muslim Woman with Knowledge of the Sources}

To gain credibility as someone well-versed enough to navigate the classical religious sources and understand them, Mernissi tells us how “inspired by a fierce desire for knowledge,” she pored over all 17 volumes of \textit{Fath al-bari}, the premiere commentary on \textit{Saḥīḥ al-Bukhārī} by Ibn Hajar al-Asqalani, where she would discover the infamous hadith about ill-fated female leaders in volume 13 of Ibn Hajar’s work.\(^\text{140}\) Elsewhere she reveals that, in order to contextualize the tradition, to understand “the conditions in which it was first put to use,” she read all thirteen volumes of al-Tabari’s \textit{Tarikh}, as well as the sira works by Ibn Sa’d and Ibn Hisham, the biographies of the Companions by Ibn Hajar, as well as the hadith collections of both Bukhārī

\begin{quote}
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\(^{\text{137}}\) Mernissi, \textit{The Veil and the Male Elite}, 2.


\(^{\text{139}}\) Mernissi, \textit{The Veil and the Male Elite}, 4.

\(^{\text{140}}\) Mernissi, \textit{The Veil and the Male Elite}, 8.
and al-Nasa’i, “all of this, in order to understand and clarify the mystery of that misogyny that Muslim women have to confront even in the 1990’s.”

Mernissi makes two clever moves here in order to proceed with her argument: she first positions herself as somewhat of an outsider to the tradition, as “an average Muslim [who] can never know as much as an imam” while simultaneously propping up the great traditionist Bukhārī as “meticulous,” as engaged in a scientific and methodical process of “selection, verifications, and counter-verifications,” likening him to a nineteenth century anthropologist conducting interviews and fieldwork, in order to whittle down questionable traditions into a modest collection of some 4,000 (without repetitions) authentic hadith. If it was accepted by Bukhārī, she maintains, the tradition is “a priori considered true and therefore unassailable without proof to the contrary.”

But then Mernissi turns this uneven dynamic on its head, and she becomes the empowered, all-knowing, textually-confident researcher, retracing Bukhārī’s work, and in a sense – with apologies to Audrey Lorde – deploys “the master’s tools to dismantle the master’s house”. Indeed, claiming it to be her prerogative as a Muslim woman, Mernissi begins her own “double investigation” – both historical and methodological – of the hadith and the Companion of the Prophet with whom it originated, Abu Bakra. Armed with the traditional sources at her disposal, Mernissi follows in the footsteps of traditional Hadith scholars, examining chains of transmission for errors and possible fabrications as well as the circumstances and motivations of each transmitter. In this way, Mernissi sheds light on Abu Bakra’s possible rationale for reciting this particular hadith when he did and successfully raises some serious questions as to why this source ever made its way into Bukhārī’s canonical work to begin with.

**Following in the Footsteps of the Hadith Scholars: Investigating the Transmitter**

143 Mernissi, *The Veil and the Male Elite*, 49
Accordingly, Mernissi interrogates the historical circumstances that occasioned the Abu Bakra tradition, pointing out that in Bukhārī’s version of the hadith, the Prophet uttered these words upon hearing that Persia had crowned a woman as their ruler.\footnote{146} Abu Bakra, is said to have suddenly recalled the Prophet’s words during the Battle of the Camel (656 CE), a civil conflict spearheaded by ‘A’ishah, the widow of the Prophet, against the fourth caliph Ali, which, as explained earlier, resulted in the defeat of her troops.\footnote{147} Mernissi is understandably suspicious that Abu Bakra would have conveniently remembered the Prophet’s statement over twenty-five years after the incident that prompted the remarks in the first place.\footnote{148}

As noted by medieval chroniclers, The Battle of the Camel completely divided the community, leaving people in the unenviable position of choosing between the appointed caliph and the Prophet’s widow. Like many of his colleagues for whom civil war was unthinkable, Abu Bakra had chosen to abstain from participating, and since he had not followed Ali into battle, he was now in an extremely precarious position.\footnote{149} Thinking that his life possibly hung in the balance, it would certainly serve him well to remember “having heard a hadith that intimated an order not to participate in a war if a woman was at the head of the army.”\footnote{150} Thus, Mernissi illustrates that Abu Bakra’s well-timed invocation of the Prophet’s words is certainly questionable.\footnote{151}

\begin{footnotes}
\item[146] In fact, there is some historical evidence to suggest that, upon the death of the Sassanian ruler Khusrau in 630 CE, his daughter ruled over the Empire for a short period of time. See Mernissi, The Veil and the Male Elite, 49; Spellberg, Politics, Gender and the Islamic Past, 139; and Abou El Fadl, Speaking in God’s Name, 136 note 41.
\item[147] See Introduction, ‘‘A’ishah as Cautionary Tale’, 32.
\item[148] Mernissi, The Veil and the Male Elite, 50.
\item[149] As Mernissi observes, of the many reasons cited for opting out of the fitna, only Abu Bakra would base his actions on the Prophet’s purported admonition of those who choose to follow a woman’s lead. See Al-Asqalani, Fath al-bari (Cairo: Al-Matb’a al-Bahiya al-Misriya, n.d.), vol. 13, pg. 46 as cited in Mernissi, The Veil and the Male Elite, 56. According to Mernissi, in Asqalani’s text, Abu Bakra invokes the Prophet’s words when ‘A’ishah sends him a formal request to join her in battle. For the rationales of others who chose to abstain, see Tabari, The History of al-Tabari, Volume XVI, 86-91.
\item[150] Mernissi, The Veil and the Male Elite, 58.
\item[151] See The Veil and the Male Elite, 58. For Khaled Abou El Fadl’s slightly different treatment of this hadith, which takes an equally damning approach to the figure of Abu Bakra, see Speaking in God’s Name: Islamic Law, Authority and Women (Oxford: OneWorld, 2001), 111-114.
\end{footnotes}
transmitter was qualified from an intellectual and moral perspective. Accordingly, Mernissi further calls Abu Bakra’s reputation into question by reminding us that he was punished for slandering al-Mughirah and wrongfully accusing him of adultery. As a result of this incident, in which the testimonies of Abu Bakra and his co-petitioners are thrown out for being inconsistent, Abu Bakra is flogged and the caliph Umar refuses to accept him as a credible witness ever again.\textsuperscript{152} As noted earlier, according to all four schools of Sunni jurisprudence, one of the criteria for a hadith to be considered reliable is that each of its transmitters needs to be seen as ‘adl, or righteous. As Hallaq explains,

The rectitude of the transmitter played a central part in determining the status and authenticity of Prophetic reports…The attribute that was most valued, and in fact deemed indispensible, was that of being just (‘adl), namely being morally and religiously righteous, having committed no grave sin, and no more than a few minor ones. A just character seems to have implied another requirement, i.e. that of being truthful (sadiq) and incapable of lying.\textsuperscript{153}

While Companions of the Prophet such as Abu Bakra were generally thought to be ‘adl,\textsuperscript{154} as Abou El Fadl tells us, “The normal course and practice of juristic communities of interpretation is to refuse to accept reports narrated by individuals who were convicted of moral crimes such as slander or false accusation.”\textsuperscript{155} Mernissi herself cites the writings of Malik Ibn Anas as a guide in this matter, as he was one of the key imams whose knowledge “enables the believer to distinguish the permitted from the forbidden.” Malik reveals that one of the key reasons he rejected some transmitters was because he saw them “lying in their relations with people, in their daily relationships that had nothing to do with religion.”\textsuperscript{156} Accordingly, Mernissi concludes that following the principles of fiqh as outlined by Malik, “Abu Bakra must be rejected as a source of Hadith by every good, well-informed Malikite Muslim.”\textsuperscript{157} In this respect, she beats the


\textsuperscript{153} Wael B. Hallaq, \textit{A History of Islamic Legal Theories: An Introduction to Sunni \textit{Uṣūl al-Fiqh}}, (Cambridge: Cambridge University Press, 1997), 66.


\textsuperscript{155} Abou El Fadl, \textit{Speaking in God’s Name}, 112.

\textsuperscript{156} See Mernissi, \textit{The Veil and the Male Elite}, 60.
scholars at their own game, using their own criteria to disqualify a tradition that has become “the sledgehammer argument used by those who want to exclude women from politics.”

Why Malik ibn Anas?

We will return to her appeal to the ‘good Malikite Muslim’ in a moment, but it is interesting that Mernissi does not re-invoke the scrupulous Bukhārī here to question pointedly why the Abu Bakra tradition – with its far-reaching and damaging implications for women – did not end up on Bukhārī’s cutting room floor as one might expect given the common practice of rejecting reports stemming from transmitters with a questionable moral compass. In a later chapter she does in fact suggest that “even the authentic Hadith must be vigilantly examined with a magnifying glass,” and excuses al-Bukhārī for his slips by pointing out that even he acknowledged at the start of his work that Allah alone is infallible. She goes so far as to recommend that present-day Muslims take a page out of Bukhārī’s book; just as the pious scholar approached the material he collected with suspicion, so too should modern practitioners continue to be critical of all the sources they are presented with, including the saḥīḥ Hadith.

But perhaps she does not dwell on Bukhārī here, opting instead to focus on Malik’s approach to Hadith analysis, because it is the Maliki madhab (named after Malik Ibn Anas) which predominates in the modern nation-state of Morocco where she resides. Perhaps she

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159 Bukhārī, in fact, includes Abu Bakra as the narrator of over 30 different traditions, and ironically, several of those traditions have to do with the Prophet warning that giving a false testimony is one of the gravest sins. (See for example, Bukhārī, *Sahīḥ*, Volume 9, Book 84, Number 54; Volume 8, Book 73, Number 7: “And I warn you against giving forged statement and a false witness; I warn you against giving a forged statement and a false witness.” The Prophet kept on saying that warning till we thought that he would not stop.”) Why then, would the words of a man who was forbidden by a caliph from testifying be preserved in the historical record to be retained and passed down in Bukhārī’s *Sahīḥ*? Abou El Fadl has offered a few possible explanations: a) Abu Bakra never withdrew his accusation of adultery, so perhaps he continued to believe that the accused was guilty; and b) perhaps the tradition was preserved because it was consistent with the priorities and subjectivities of knowledge-makers and interpreters in authoritative communities and settings over time. See Abou El Fadl, *Speaking in God’s Name*, 114.

160 See Mernissi, *The Veil and the Male Elite*, 76.

161 Mernissi describes how Bukhārī took his “science” seriously and would pray and purify himself between interviews with informants so as to avoid subjectivity in his work. See Mernissi, *The Veil and the Male Elite*, 44.

162 Indeed, Maliki law retains much influence in the modern state of Morocco, especially in matters of personal status. In the state’s 1958 “Code of Personal Status and Succession”, it was suggested that when an issue not covered by the Code were to arise, “the most authoritative or best known and widest applied opinion of the Maliki
foregrounded here the approach of Malik, the eponym of the doctrinal school pervasive in her native land, since she knows that, at the end of the day, it is not so much what the canonized Hadith say that matters, but rather how the Hadith were received and interpreted by the legal scholars whose opinions would affect daily practice.

**Mernissi: Approaches to the Law**

Indeed, Mernissi’s references to Malik, ‘good Malike Muslims’, and to the opinions of the jurists in general does speak to a certain weight that religious law plays in her thinking. In fact, her interest in Hadith stems from its being, along with the Qur'an, “the source of law and the standard for distinguishing the true from the false, the permitted from the forbidden.” In addition to skewering the Abu Bakra hadith, Mernissi similarly probes and successfully raises questions about the credibility of another Companion, the very prolific Abu Hurayra, who was the source of several less-than-flattering traditions pertaining to women, including one suggesting that one’s prayer is interrupted if a dog, an ass or a woman passes between the worshipper and the *qibla*, or direction of prayer. It is perhaps no coincidence that the two hadith that she makes the subject of an in-depth inquiry are legal hadith. Both of these traditions appear in the well-known and most widely available collection of legal hadith, *Bulugh jurisprudence*” would apply. See Jamal J. Nasir, *The Islamic Law of Personal Status* (London: Graham and Trotman, 1986), 34. Article 400 of the 2004 Family Law Code, the Moudawana, suggests the same, that “all issues not addressed by a text in the present code, reference may be made to the Malikite School of Jurisprudence and to *ijtihād* (juridical reasoning) which strive to fulfil and enhance Islamic values, notably justice, equality and amicable social relations.” See “The Moroccan Family Code (Moudawana) of Februay 5, 2004” , trans. Global Rights (2005), (accessed 17 Jan 2013) <http://www.hrea.org/moudawana.html>. All this suggests that Mernissi’s invocation of Malik Ibn Anas, the eponym of the Malike madhab, is a strategic shout-out to her fellow Moroccans to take nothing for granted and be aware of alternative approaches and interpretations of the laws under which they are living.


164 Mernissi demonstrates that Abu Hurayra clearly had some emotional baggage when it came to women (his name translates to ‘Father of a Female Cat’), that he was often contradicted by ‘A’isha and other Companions and was repeatedly chastised for being overzealous in transmitting hadith, including ones that he could not possibly have remembered. Although he is accredited with thousands of hadith in various collections, ‘A’isha in particular is associated with traditions that accuse him of being a poor listener. See Mernissi, *The Veil and the Male Elite*, 62-81.

165 In the chapter examining Abu Hurayra, Mernissi does include numerous hadith which touch on “the polluting nature of women,” several of which would not be considered legal hadith per se. However, the tradition about the *qibla*, being the first she introduces, looms over the chapter as well as Islamic praxis in general, for as Mernissi aptly points out, since Muslims can pray anywhere, the *qibla* is everywhere, hence, excluding women from the *qibla* is “excluding them from everything – from the sacred dimension of life.” See Mernissi, *The Veil and the Male Elite*, 69.
al-Maram min Adillat al-Ahkam (Attainment of the Objective According to Evidences of the Ordinances) by Ibn Hajar al-Asqalani which provides a survey of all the traditions used as sources of fiqh by the jurists.  

To put Mernissi’s focus on legal hadith in perspective, there are, undoubtedly, several thousand more hadith that do not serve as the bases of legal ordinances than those that do. As previously noted, there are approximately 19,600 authentic hadith in the six canonized books and Ibn Hajar’s Bulugh al-Maram, contains a mere 1,358 hadith. And as we shall see with the work of Sa’diyya Shaikh below, there are several hadith that engender negative stereotypes about women which do not have direct legal ramifications per se, so Mernissi’s emphasis on the way that gender plays itself out in legal hadith in particular cannot be viewed as an obvious or inevitable scholarly move.

Reinforcing or Subverting Traditions: The Hadith in the Hands of the Jurists

It is perhaps noteworthy that, among the Muslim women scholars we have investigated thus far, Mernissi is the first to continue to reside in a Muslim-majority country, and hence her interest in law is not merely theoretical. Mernissi is clearly most interested in the practical implications that these traditions have on present-day Muslim women. She is spurred on to investigate the Abu Bakra hadith because it establishes a powerful norm. She explains that the hadith is so entrenched in contemporary discourse that “it is practically impossible to discuss the question of women’s political rights without referring to it, debating it and taking a position on it.”

Admittedly, even hadith that are not directly used as the basis of legal rulings can certainly be understood as informing general attitudes towards women. This is perhaps not unlike the relationship between halakha and aggada in rabbinic literature as discussed earlier. Still, it is significant that Mernissi focuses on legal hadith in her writings, given the largely phobic relationship to law that we have seen among other Muslim women exegetes thus far.


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166 Ibn Hajar al-Asqalani includes the Abu Bakra tradition as hadith number 1197 in the sub-section of his work called “The Book of Judgement”, and cites Bukhārī as the source. See Ibn Hajar Al-Asqalani, Bulugh al-Maram, translated/supervised by Abdul Malik Mujahid, (Riyadh, Saudi Arabia: Dar-us-Salam Publications, 1996), 494. The Abu Hurayra hadith is listed as number 183 in Bulugh al-Maram, in a sub-section of the work on prayer. Ibn Hajar indicates that variations of the latter hadith can be found in the collections of Muslim, Abu Dawud and An-Nasa’ī, but not in Bukhārī, as suggested by Mernissi. In fact, in Bukhārī’s collection of Sahīh, we instead find the numerous traditions by ʿAʾisha and others refuting the idea that the Prophet ever likened women to dogs and donkeys or that a woman in one’s sightline could nullify one’s prayers. See for example Sahīh al-Bukhārī, Volume 1, Book 9, Number 486.


finds solace in the fact that, despite being classified as saḥīḥ, the text’s normativity was also hotly debated by medieval jurists, and that Tabari, notably, found it to be insufficient grounds for barring a woman from political life. She similarly takes a degree of smug pleasure in the fact that in the debates between ‘Aʾisha and the other Companions (including Abu Hurayra), about the “polluting” aspect of women when it came to sexual activity and menstruation, the jurists historically sided with ‘Aʾisha whose traditions portray the Prophet as sharing a bed and ablutions water with his menstruant wives and not rushing to purify himself immediately after sexual intercourse. Mernissi laments the fact that although the books of fiqh which deal with ablution rituals “do not make the woman a negative pole that ‘annihilates’ in some way the presence of the divine” ignorance of these laws and the stranglehold of customary practices have resulted in her having been denied admittance to numerous mosques throughout the Muslim world. So we see the way she not only emphasizes legal hadith in her work, but the way she also turns to the questions raised by the later legal traditions as a precedent to query the sacrosanct place that some of the hadith have in contemporary discourse. This strategy of appealing to the multiple and nuanced understandings of the classical jurists for dealing with problematic texts has already been noted as one employed by Hauptman, Tikva Frymer-Kensky and Amina Wadud above. It also has notable parallels with the modernist approach to hadith taken by scholars such as Muhammad Abduh and Mohammed al-Ghazali, as indicated above. So Mernissi is in good company here in using this approach.

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170 This is consistent with some of Tabari’s other positions on women’s rights, such as his acceptance of a women as judge (found in al-Mawardi) and as a leader of mixed-gender prayers (in Ibn Rushd). It is also worth noting that in Tabari’s History, in his description of the events leading up to the Battle of the Camel, there is no mention of Abu Bakra or his stance against participating in a war led by a woman. Similarly, Abou El Fadl notes that in many collections of Hadith, the Abu Bakra tradition does not appear in the section on governorship, indicating that perhaps it was not necessarily regarded as a general rule setting out the required credentials for a leader. See Abou El-Fadl, Speaking in God’s Name, 136, note 53.

171 See Mernissi, The Veil and the Male Elite, 70-75. She actually characterizes these prevailing ideas as understood by the jurists as “superstitions” and “Jewish beliefs” against which the Prophet was reacting.

172 See Mernissi, The Veil and the Male Elite, 74-75.

173 Idem.

174 See page 173 above.
But some critics seem to have missed the role that law places in her Hadith analysis. Raja Rhouni has charged that Mernissi’s method of questioning the reliability of Hadith transmitters is flawed because it espouses the very logic of authenticity, rather than arguing for new contextual readings which might raise more productive questions about which aspects of the Hadith in general are eternally binding on Muslims.\footnote{See Rhouni, \textit{Secular and Islamic Feminist Critiques}, 215. Although Rhouni borrows this idea from Nasr Hamid Abu Zaid’s exegetical approach to the Qur’an, it is not unlike Rahman’s double movement theory, which looks to isolate the rationale behind Qur’anic principles so that they can be properly adapted in a present-day context.} Rhouni suggests that the methodology of verification of each transmitter in the isnad as per the authentication paradigm of the traditionists which Mernissi has adopted in order to debunk the Abu Bakra and Abu Hurayra hadiths may not prove as effective in other instances of so-called misogynistic hadith. In other words, Rhouni suggests that Mernissi got lucky here and her method has limited application. Rhouni is also critical that she undermines these hadith as an end in and of itself rather than a means to challenge discourses of authenticity altogether.\footnote{Ibid. 214-216.} However, I would suggest that Mernissi is doing more than merely rejecting reports whose sources are questionable. What Rhouni fails to recognize is Mernissi’s deployment of the later legal tradition to shake up accepted meanings of the Hadith. She is not merely suggesting that traditions posited by transmitters who have questionable motives are inauthentic according to traditional criteria and should therefore be rejected by Muslims, especially those who follow the Maliki school. Rather, she is illustrating that the labelling of something as saḥīḥ was only relevant and practicable if it was deemed to be so by the scholars and power-brokers to whom they were linked. The significance of a hadith in daily life was dependant on its application by the jurists in the legal system. Indeed, unlike the classical traditionists who were preoccupied with evaluating isnads, Muslim jurists often employed hadith with problematic isnads in their derivation of law and did not overly emphasize the status of the saḥīḥ collections in their work.\footnote{The Hanafis even felt that an especially esteemed and skilled jurist could dispense with the isnad altogether on a matter well established by the community of scholars. Indeed, the difference in priorities between the traditionists and the jurists is reflected in the fact that the very hadith employed by the jurists to justify their own authority - such as those that tout the infallibility of ijmā’, or support making legal decisions based on the good of the community, known as maslaha - are considered weak by Hadith scholars. The superiority complex of the classical jurists with regard to their use of Hadith is evident in a popular saying comparing jurists to doctors and traditionists to pharmacists; the hadith scholars may provide the raw ingredients, but the jurists are better equipped to prescribe and make the best use of the actual medicine. See Jonathan Brown, \textit{Hadith}, 157; 160; 169.} So in some ways, by appealing to juristic
thinking over and above that of the Hadith scholars, she is reacting against the privileging of the Hadith, especially those in the *Saḥīḥ* ḭayn, that has taken root in many contemporary Muslim discourses. While a hadith on the surface may seem to mean one thing, its use in the classical legal system left room for other possibilities.

Although Rhouni has argued that Mernissi’s romanticization of the time of the Prophet and some of the early scholars such as Bukhārī leaves the reader with no real recipe for reform in the present, I would contend that Mernissi has at least illustrated that certain texts persist only because they served certain interests, and based on the very rules established by the jurists, their inclusion in revered works should not render them immune from reconsideration. As Mernissi herself explains, “What seems important to me is that a debate in Islamic religious literature is never closed. Each generation takes it up where the previous one left it to discuss it again.”

While it may not be a specific formula, this certainly does sound like a call to arms. Although she does not invoke the language of *ijmā’* (consensus) or *ikhtilaf* (juristic disagreement) here, Mernissi seems to suggest that, as per the classical tradition, as long as there was disagreement, one could continue to debate the subject. Interestingly, she fails to mention that this power to debate was really meant to be limited to the juristic community.

**Law as Power**

Indeed, it is perhaps no coincidence then that Mernissi refers to the Hadith along with the Qur’an as “the power texts.” But these texts are not merely powerful as the foundational sources of Islam, but rather because they are used to justify various forms of political power. For Mernissi, like Peskowitz, law is tied to power. But unlike Peskowitz who sees the enforcement of the law pervading day-to-day interactions, for Mernissi, the law is dictated by male elites. Mernissi frequently talks of the law’s ability to be manipulated for political purposes. In fact, the whole first section of her work in which she examines the hadith is aptly titled, ‘Sacred Text as Political

178 See Mernissi, *The Veil and the Male Elite*, 147. Admittedly, she does warn here of the malleability of the verses and the need to develop general principles which embrace the sovereignty and free will of the individual. She charges that it is a lack of courage on the part of the imams, both past and present, to make these assertions that allows the sacred texts to continue to be manipulated contra the best interests of women.

Weapon.’ In it, she describes how, even from the time immediately following the Prophet’s death, determining what was essential to the practice of the religion was a “process in which only the elite was involved.”\textsuperscript{180} She sees the fate of the tafsīr, hadith and fiqh as having been sealed when they were ordered to be set down in writing by the heads of the Abbasid state. Citing the work of Moroccan intellectual Muhammad al-Jabiri, she suggests that because the process of fixing these texts was entirely supervised by those in power, it marked the “beginning of an institutionalization of censorship” in Muslim societies.\textsuperscript{181}

In her work, she repeatedly shows us examples of the intertwining of religious law and power. Indeed, her definition of being a Muslim, of Islam itself, is inextricably linked to obeying the laws of the theocratic state. Although she critiques this as a workable model, and would prefer a complete separation of religious and secular powers, she regards belief as being secondary in the modern Muslim state; thus being a Muslim is a national identity but also “a civil matter...a family code of laws, a code of public rights.”\textsuperscript{182} Here religious law as interpreted and enacted by state power are what create a contemporary Muslim identity.

She ironically would become a victim of the male elite which she derides when \textit{The Veil and the Male Elite} would suffer a publication ban in Morocco and a death fatwā would be levelled against her for her critique of Abu Hurayra in particular, since he is thought to be the source of over 5,000 hadith linked directly to the Prophet.\textsuperscript{183} And despite having boldly claimed her right as a Muslim woman to reinterpret the traditional texts, in 1999, rather than being branded as a “good Malikite Muslim” for rejecting an unreliable transmitter, she would instead publicly be

\textsuperscript{180} Mernissi, \textit{The Veil and the Male Elite}, 39.
\textsuperscript{181} Mernissi, \textit{The Veil and the Male Elite}, 16.
\textsuperscript{182} Mernissi, \textit{The Veil and the Male Elite}, 20-21. While her perspective here is reflecting the reality of living in a Muslim-majority state, Mernissi hints that she herself wishes that personal belief would actually be the primary indicator of Muslim identity. She believes that this failure to understand the role of Islamic law in identity formation is what accounts for the failure of leftist and nationalist movements in Arab states. Elsewhere, Mernissi characterizes the apparent chasm between Islam and democracy as a legal conflict, with Islamic states rooted in shari’a and democratic states basing their legal framework on the United Nations Charter. See \textit{Islam and Democracy: Fear of the Modern World} (New York: Basic Books, 2002), 60.
\textsuperscript{183} See Rhouni, \textit{Secular and Islamic Feminist Critiques}, 210. Eventually, the book would circulate in both French and Arabic.
called “faqiha biduni fiqh” – a female legal scholar without fiqh – by the Moroccan Minister of Religious Affairs, Abdelkebir Alaoui Mdaghri, for her reading of the Abu Bakra hadith; Mdaghri’s own work would reinforce that, according to Islam, maleness is indeed a necessary quality for leadership.\(^\text{184}\) Rhouni reads this as a failure of Mernissi’s authenticity argument; since she did not push the question beyond the accuracy of the report (whether it should be technically accepted or rejected as fabricated because of the rectitude of the transmitter) to critically examine instead the currency/relevance of the content, it is easily overturned by her opponent. But I would argue that the fact that her work solicited a lengthy response from a representative of the state who speaks to issues of religion, is an indicator that her argument was actually quite threatening to religious authority.

Yet while Mernissi continually warns of “the use of the sacred by men to legitimize certain privileges, whether they be of a political or a sexual nature,” her own work illustrates the importance of women becoming textually-confident, active interpreters, rather than just subjects of interpretation.\(^\text{185}\) The notion of women’s interpretation as a game-changer will be echoed in Shaikh’s work below as well as in Chapter 5, when we meet Toronto-based Jewish and Muslim laywomen. But the urgency of transforming the existing power dynamic, and having other, non-normative voices weigh in on the definition of religious texts, is evident in Mernissi’s choice to close her work with an anecdote about a male editor of a London-based Islamic journal who called her a liar at a conference when she relayed the remarkable, albeit widely-documented, life story of the Prophet’s great-granddaughter, Sukayna. Sukayna, like Mernissi, was a woman who was not afraid to take her knowledge of fiqh into her own hands to challenge accepted doctrine. In Sukayna’s case, she would insist on the inclusion of stipulations in her marriage contract that prohibited her husband from taking another wife and allowed her freedoms, which might otherwise constitute nushuz, or rebelliousness.\(^\text{186}\) That the editor was still not satisfied when Mernissi rattled off her sources, which included numerous biographical dictionaries by scholars such as Ibn Sa’d, al-Zamakhashri, al-Dhanabi, and al-Bukhārī, illustrates just how

\(^{184}\) See Rhouni, *Secular and Islamic Feminist Critiques*, 222.

\(^{185}\) See Mernissi, *The Veil and the Male Elite*, 147.

\(^{186}\) See Mernissi, *The Veil and the Male Elite*, 193. For an analysis of the concept of nushuz in the Qur’an, see Chapter 2, 22-23.
explosive it was for Mernissi as a Muslim woman to claim the right to interrogate the work of Bukhārī and poke her nose around in other interpretive traditions. As mentioned earlier, in a later work, Mernissi contends that being a learned woman and making in-roads in academia hardly guarantees access to power.\(^\text{187}\) In contrast to women politicians, she asserts, “a woman intellectual does not upset the [religio-political] system.”\(^\text{188}\) Indeed, overturning existing political structures is a tall order. However, if the fallout from Mernissi’s own foray into Islamic interpretation shows us anything, it is that women intellectuals can - at the very least - rattle the foundations.

**Hadith as Literature**

While Mernissi’s Hadith analysis represents a new variation on a classical approach, the hermeneutic of Sa’diyya Shaikh is reliant on more recent and emerging methodologies in Islamic Studies as well as methods imported from other disciplines such as Christian feminist theology. Before turning to her work, it would be useful to speak to the novel strategy of reading Hadith as literature which is gaining traction in some scholarly circles.

We noted earlier the current trend in Jewish Studies to de-emphasize legal readings and undertake literary analyses of the Talmud, which has been warmly received by feminist scholars such as Peskowitz and Labovitz in particular. A similar trend in academic studies of Hadith has also been noted, but its appeal has been far more limited. It is most closely associated with the work of Sebastian Gunther\(^\text{189}\) who, in an attempt to get out of the authentic/fabricated paradigm that so dominates modern hadith studies, appeals to modern literary theory’s more blurry conceptions of ‘fiction’ and ‘non-fiction’ to analyze hadith.\(^\text{190}\) Gunther makes a claim that although the hadith purport to relate events as they actually happened they retain enough “signs


\(^{189}\) For a more general discussion of the role of fiction in pre-modern Arabic literature, see also Stephan Leder, “Conventions of Fictional Narration in Learned Literature” in *Story-telling in the Framework of Non-fiction Arabic Literature*, ed. Stephan Leder (Weisbaden: Otto Harrassowitz, 1998), 34-60.

of fictionality” – that is to say, evidence that they have been “shaped by the individual narrator’s experience and formulated on the basis of creative sovereignty” – to have parts of the corpus qualify as “fictionalized narratives,” based on historical or actual events. He points to moments when narrators clearly abbreviated details, left out dates and locations, and circulated narratives with the same essential message, yet with different words, or sequence of events, to illustrate the role of imagination in ‘fictionalizing’ the exemplary past. While he acknowledges the problems associated with viewing the second most authoritative source in Islam as partially fictionalized, Gunther maintains that deconstructing the Hadith in this way will only broaden their import as a literary, intellectual, and socio-historical source. Noticeably lacking in this analysis is the role of the Hadith in the formulation of law.

Sa’diyya Shaikh’s Method: Content Criticism Using Christian Feminist Hermeneutics

While not explicitly influenced by Gunter, Sa’diyya Sheikh, an anthropologist by training, similarly tries to steer clear of the methodological fray which questions the very authenticity of the Hadith as an accurate reflection of the Prophet’s Sunna, and as we shall see, she also de-emphasizes law in her reading of these texts. Although on some level, it is the Hadith’s very connection to law that makes it an area worthy of study for Shaikh. Indeed, like Mernissi, she sees the Hadith corpus as important because it is a “norm-providing authority” in Islam. And

191 See Gunther, “Fictional Narration,” 37.
192 Gunther suggests that even classical traditionists recognized the role of fictionalization involved in the process of Hadith transmission, as they differentiated between al-riwayah bi-l-lafz, authentic reports with identical wording and al-riwayah b’il-mana, authentic reports with identical meaning, suggesting that forgetting small details or interchanging words with the same semantic meaning did not necessarily take away from the authenticity of a report. See “Fictional Narration, 60.
193 In contradistinction to Peskowitz who highlighted how law was constructed in the ‘everyday’, Gunther tellingly distinguishes between legal hadith (hadith al-ahkam) and hadith that “tell us about people in the mosque and in the marketplace, in the field, the desert, the living room and bedroom.” Gunther, “Fictional Narration,” 39. Given the vast array of areas covered by Islamic law, one could certainly argue that legal hadith similarly reveal or at least attempt to represent these arenas of ‘everyday life’. Indeed, Mernissi deemed the hadith to be “a veritable panorama of daily life in the seventh century” citing the colourful juxtaposition of traditions on subjects as varied as “‘how to perform one’s ablutions’, ‘how to behave on one’s wedding night,’ and ‘what is to be done in the case of civil war’,” all of which could easily be construed as ‘legal’ texts. See Mernissi, The Veil and the Male Elite, 38. Nonetheless, Gunther is less interested in questions of law and more invested in establishing the hadith as part of the belles-lettres genre in Arabic literature. See Gunther, “Modern Literary Theory”, 32.
citing Mernissi, she recognizes the way the hadith can and have been employed to justify patriarchal thinking in contemporary Muslim communities. But this is where Shaikh and Mernissi part ways; Shaikh is quick to add that her methodology does not follow “traditional inquiries connected with isnad criticism and historical authenticity.”\textsuperscript{195} Instead, she focuses on the Hadith as a “religio-cultural text” which provides a window into conceptions of gender and women in the formative centuries of Islam; she contends these ideas were eventually normalized and assimilated into later religious discourse.

Shaikh’s interest in assessing and analyzing the content of the Hadith may be seen as having roots in the Mutazilite and Modernist Salafi approaches to the Hadith corpus described above. However, both these groups still primarily made use of matn criticism as a way of distinguishing between authentic and fabricated hadith, while Shaikh is interested in the way content is reflective and constituitive of societal attitudes and norms. While she shares with her predecessor Mernissi an interest in analyzing these texts for their gender implications, in many respects, her reading strategy is a departure from most classical, modernist and contemporary academic approaches discussed thus far.

Having chosen a contextualized content criticism over isnad analysis as her method, Shaikh chooses to zero in on hadith dealing with the subject of knowledge in Bukhārī ‘s \textit{Sahih}. She is interested in how women are constructed vis-a-vis knowledge in these canonical Hadith, since she herself is often left feeling that she is not “the normative addressee” of many of the authoritative texts in Islam.\textsuperscript{196} She cites this othering of women as particularly problematic since it undermines the Qur’anic principle of \textit{khilafa}, a concept previously invoked by both Wadud and Barlas to encapsulate the full humanity of both men and women in their divinely assigned role as trustees over the earth.\textsuperscript{197}

This conception of the full humanity of both men and women deeply informs her hermeneutic. While the principle itself, in her understanding, is embedded in the Qur’an, her theoretical

\textsuperscript{195}Shaikh, “Knowledge, Women and Gender,” 100.
\textsuperscript{196}Shaikh, “Knowledge, Women and Gender,” 99.
\textsuperscript{197}See Chapter 2, 34. Also, see Wadud, \textit{Qur’an and Woman}, xix; Barlas, \textit{Believing Women in Islam}, 106-107. The concept of khilafa/khalifa appears in the Qur’an in Q 2:30 and 38:26.
application of it borrows from Christian feminist theologians such as Elizabeth Schussler Fiorenza and Rosemary Radford Ruether, and South African liberation theologian Gerald West. She is the first among the Muslim women scholars we have looked at thus far to describe herself as employing feminist hermeneutics as her mode of analysis, defining this as “a method for interpretation which is sensitive to and critical of sexism.”198 She wants to make transparent the gender ideology operating in the text and to offer up latent themes within the Hadith as a counter-discourse.

In this respect, her work actually has much in common with that of Pardes and other Jewish feminists who analyze depictions of the feminine in the Hebrew Bible and search for non-patriarchal trends in the text. Granted, she makes no mention of any Jewish feminist scholars in her work. Indeed, as we will later discuss in more detail, despite similar interests, similar kinds of texts and similar complications for women arising from religious law, none of the Jewish and Muslim women exegetes we have introduced thus far were reading one another’s work across disciplines or faith traditions.199 Instead, as we have already noted, when feminist thought from another religious tradition is invoked in their work, it is more likely to be drawn from the writings of a Christian feminist theologian.200 Indeed, here Shaikh does rely heavily on Rosemary Radford Ruether’s conception of ‘religious anthropology’ – the underlying assumptions about how human beings, both male and female, are constructed in a religious system – in order to lay bare notions of gender and how they are connected to knowledge in Bukhārī’s text.201


199 While Frymer-Kensky, Pardes, Hauptman, and Peskowitz do not cite the work of Wadud, Barlas, Mernissi, and Shaikh and vice versa, there are some rare allusions to other feminist Jewish scholars in the work of Muslim women exegetes and references to the work of Muslim women text-scholars in other Jewish women’s scholarly writing, as I will later note. See Conclusion, note 9.

200 We noted this earlier with regard to the work of Phyllis Trible and Elizabeth Schüssler Fiorenza. See Chapter 2, 90, 107-108.

201 For Ruether, human anthropology in Christian theology has been subject to a dualism, where masculinity and males were symbolic of the higher human faculties, while femininity and females were synonymous with the ‘lower self’ and ‘sinfulness.’ Ruether suggests that the historical patriarchal anthropology of the Church needs to be replaced by a new feminist anthropology that moves beyond essentialist understandings of male and female, and instead incorporates both rational and relational modes of thought. See Rosemary Ruether. Sexism and God-talk: Toward a Feminist Theology (Boston, MA: Beacon Press, 1983), 93-112.
In her article, “Knowledge, Women and Gender in the Hadith: A Feminist Interpretation,” Shaikh examines six out of nine hadith that focus on women in Bukhārī’s sub-section on knowledge and is successful in illustrating that the attitudes towards women operating in these texts are multiple and multi-layered. In one hadith about the signs foretelling the Day of Judgement, Shaikh notes that knowledge is viewed as a male prerogative alone; the text describes the end time as characterized by an increase in women, ignorance, and illicit sexual behaviour. However, she also illustrates that other, more complex attitudes towards female sexuality are also evident in the same section of Bukhārī. As Shaikh points out, the mere fact that this appears in Bukhārī’s section on knowledge indicates that commonplace and mundane matters such as ‘sexual discharge’ still constitute an important form of knowledge. In a similar vein, she suggests that traditions where the Prophet receives revelation while “under one blanket” with ʿAʾisha are indicative of a strain of Hadith in which sexuality and spirituality are viewed as complementary rather than contradictory domains.

Shaikh’s Missing Link: The Relationship between Knowledge and Law in Bukhārī

Accordingly, it is interesting that she does not further support her argument about the physical and spiritual as integrated forms of knowledge by suggesting that the division between the categories of ‘religious’ and ‘mundane’, or ibadat (matters of worship) and muamalat (concerning social interactions), is not so clear cut in Islamic law and theology more generally. Moreover, Shaikh does not actually attempt to define what knowledge signifies in Bukhārī’s text overall. A survey of the traditions within the Book of Knowledge reveals that

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202 As Shaikh points out, women are constructed mainly in sexual terms, and a society in which women out-number men is seen as signifying “a collapse of reason and the death of knowledge”. See Shaikh, “Knowledge, Women and Gender,”101.

203 See for example Sahih Bukhārī, Volume 5, Book 58, Number 119.

204 See Shaikh, “Knowledge, Women and Gender,” 106.

205 Indeed, both are branches of furu al-fiqh and the line dividing them can be blurry, as in some sense, all muamalat can be thought of as ibadat in that these activities must be conducted in a way that worships God. In the modern period, reformer Sayyid Qutb would challenge the division as well, suggesting that any human activity should fall under the category of ibadat and to separate the two realms actually threatens the unity of Islam. See Ibrahim M. Abu-Rabiʿ “Sayyid Qutb’s Thought” in Intellectual Origins of Islamic Resurgence in the Modern Arab World (Albany: State University of New York Press, 1996), 151.
they all specifically speak to religious knowledge, and many address the rewards one will reap for actively engaging in religious study; fastidiousness in both religious learning and religious practice is specifically promoted as a way to avoid the fires of Hell. So knowledge for Bukhārī is not just about accumulating information or wisdom in general. Rather, it is about the correct application and enactment of religious principles. Several scholars have commented on Bukhārī ’s commitment to the importance of law in his compilation of Hadith and this seems to be reflected in the traditions that he has chosen to highlight in the Book of Knowledge. Shaikh’s failure to draw this connection between religious knowledge and adherence to religious law or praxis is perhaps not so surprising. Although she alludes to the Hadith as an authority and as the basis of Islamic norms, nowhere does she explicitly mention the Hadith’s role as a source of law.

Indeed, she tends to avoid broaching legal issues in all of the hadith that she tackles in her article. In her analysis of a hadith which grants a double reward to a man who teaches the fundamentals of Islam to his female slave and then marries her in order to emancipate her, Shaikh notes that by promoting marriage to the slave rather than emancipation alone, the tradition was trying to ameliorate the status of a woman who otherwise had no place within the social system. She sees this as improving the conditions of women in a 7th century context “without bringing the entire paradigm into question.” In this case, the paradigm in question seems to be patriarchy or a

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207 See for example Bukhārī, *Saḥīḥ*, Volume 1, Book 3, Number 57, 71, 80, 81, 98, 16, 107.

208 Franz Rosenthal has suggested the predominance of traditions dealing with the most effective methods of learning and of instruction in Bukhārī ’s Book of Knowledge along with its placement at the beginning of his collection was a way to justify his own meticulous methodology of studying traditions. The fact that he foregrounded knowledge as the third topic – after Revelation and Belief -- instead of burying it in the middle, as was the more typical convention in his day, could indeed suggest that it is meant to frame and justify the rigorousness behind his whole collection. See Rosenthal, *Knowledge Triumphant*, 77-84. However, given Bukhārī ’s focus on law, as well as the fact that the Book of Knowledge comes right before the books dealing with various ritual behaviours can be read as an affirmation of the fact that religious knowledge is deeply connected to religious praxis.


210 Shaikh, “Knowledge, Women and Gender,” 104.
patriarchal religious anthropology, not law per se. 211 Indeed, although this hadith may not be strictly classified as a legal one, since the text addresses the changing of a woman’s status from slave to freed woman and wife, one would expect at least a cursory discussion of fiqh here. However, other than explaining that a female slave’s duties included sexual relations, she has little to say about Islamic law in her analysis.

The Law: That which shall not be named?

Nonetheless, she is not oblivious to the on-the-ground, practical impact that these texts continue to have. She acknowledges that reading the male human being as normative in the Hadith is still pervasive, and that it “has enormous repercussions in the lives of Muslim women.” 212 While she does not elaborate on the specifics of these repercussions, like Mernissi, she insists that a more critical relationship to the Hadith texts be taken, that women not simply be fit into a male paradigm, but that the entire patriarchal framework needs to be upended so as to reflect “the fullness of human experience.” 213 But she provides few guidelines for doing so. One could certainly argue that she is more focused on transforming the meta-fiqhic principles that inform the law, rather the law itself. And indeed, in her analysis of a hadith where ‘A’ısha debates and clarifies a Qur’anic precept with her husband, she suggests that if the marital relationship of ‘A’ısha and the Prophet, which seemed to be a meeting of the minds, both spiritually and intellectually, were to serve as a model, it could serve “as a radical transformation” of gender relations as depicted in other Hadith. 214 So while she does point to counter-discourses on women in the Hadith that defy gender stereotypes, and which could be used as precedents in a new transformative framework, she refrains from explicitly naming which institutions collude to perpetuate existing attitudes and practices. But why does she so deliberately sidestep the law in her text?

211 Although Shaikh’s article contains too little information to analyze this systematically, perhaps, as we saw in the work of Pardes, the word patriarchy itself connotes law in Shaikh’s work. If so, it is noteworthy that, in the opening paragraph of her article, she declares patriarchy to be a form of shirk, or idolatry. See Shaikh, “Knowledge, Women, Gender,” 99.


214 See Sahih al-Bukhari. Translated by M. Muhsin Khan. (USC-MSA Compendium of Muslim Texts: University of Southern California), Volume 1, Book 3, Number 103.
Shaikh’s Treatment of Q 4:34: Law as non-binding?

To further contextualize Shaikh’s understanding of the Hadith and reluctance to engage with the legal aspects of classical Islamic texts, it helps to examine briefly her approach to Qur’anic verse 4:34, since, like most women scholars of Islam, Shaikh too has weighed in on this highly problematic piece of scripture. In one of her earlier articles, just as in the case of her Hadith analysis, Shaikh makes use of feminist hermeneutics along with Gerald West’s approach of “reading behind the text” to both critique and historicize the tafsīrtafsīr traditions surrounding verse 4:34. Shaikh seems to understand readings of 4:34 that sanction violence against women as overly simplistic and de-contextualized. Like Barlas, she believes that the exegetes are responsible for the verse’s patriarchal meanings and that the Qur’anic text itself did not necessitate such an understanding. As Ayesha Chaudhry has shown, rather than strategically deploying the example of Prophetic Sunna, which is a common yet unusual move among female interpreters when broaching this verse, or suggesting other possible translations of the word daraba, Shaikh follows the approach of Fazlur Rahman in insisting that the imperative to

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216 Since the Prophet never strikes his wives, he is taken as an exemplar acting against the permission for such action seemingly granted by verse 4:34. Wadud alludes to the more positive example of the Prophet as one stop along the way in the historical contraction of the scope of Q 4:34 in Inside the Gender Jihad (202). Barlas too, although not dwelling on this, also makes the Prophet’s refusal to physically discipline his wives part of her argument against understanding the verse in this way. See Believing Women, 187. Laleh Bakhtiar and Hadia Mubarak make similar appeals to the Sunna in their treatment of this verse. See Laleh Bakhtiar, The Sublime Qurʾan website (accessed 17 March 2012) and Hadia Mubarak, “Breaking the Interpretive Monopoly: A Re-Examination of Verse 4:34,” Hawwa 2/ 3 (2004), 275. Both Kecia Ali and Ayesha Chaudhry have noted the unusual championing of Hadith by Muslim women scholars when it comes to verse 4:34, since the Prophet’s example in this case is far more palatable than the apparent implications of the Qur’anic verse. While, as we have seen, the Qur’an is generally privileged over the Hadith by women scholars, and the Hadith tend to be dismissed as a source of misogyny, in this rare case, the Hadith is drawn back into the discourse and regarded as an invaluable authority. See Ayesha Chaudhry, “The Problems of Conscience and Hermeneutics: A Few Contemporary Approaches” in Comparative Islamic Studies (2008), 161; Kecia Ali, “A Beautiful Example”? The Prophet Muhammad as a Model for Muslim Husbands: Critical Islamic Reflections Conference, Yale University. April 2003. http://www.yale.edu/cir/2003/ (accessed 7 May 2012).

217 Which, we recall, is the approach taken by Riffat Hassan, Laleh Bakhtiar, and Wadud in Qur’an and Woman. See Chapter 2, 23, note 63.
“beat” one’s wife is descriptive of the seventh century context and not meant to be prescriptive for all time.  

Although Shaikh does refer to the direct impact of classical tafsīr on South African Muslim leaders who transmit its core teachings in their roles as “marriage counsellors and legal advisors” and acknowledges that notions of corporal punishment were part of the “legislative culture” of medieval Islam, Islamic law, again plays little role in her analysis of the verse. Shaikh claims that she focuses on tafsīr because, as a body of literature, it reflects the “dynamic interaction between sacred text, consciousness, and social reality.” While one would expect that Islamic legal texts could also reflect this relationship between scriptures, consciousness and lived, communal realities, Shaikh’s non-engagement with fiqh is not surprising here. Chaudhry has noted that those like Shaikh, who seek to exonerate Q 4:34 from being responsible for any misogyny read into it, locate most of the blame in the received tradition, focusing their attention on “exegetical works rather than jurisprudence.” Furthermore, Chaudhry observes that within these new approaches to the text, historical precedent is regarded as “a helpful reference rather than a binding authority,” which would seem to undermine the relevance of law entirely. But is this really the way that women experience religious law in their day-to-day lives?

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222 Ayesha Chaudhry, “The Problems of Conscience and Hermeneutics: A Few Contemporary Approaches” in Comparative Islamic Studies 2, 2 (2006): 164. In her article, Chaudhry distinguishes between ‘idealist’ scholars who steer clear of blaming the Qur’an for misogynistic readings and ‘reformist’ scholars who give more leverage to the current interpretive context and are not beyond suggesting that the Qur’an itself may be androcentric. Her comment about historical precedent being a non-binding reference pertains more to the reformist camp; however, she acknowledges that her divisions are not meant to be air-tight and that Sa’diyya Shaikh specifically does not perfectly fit into any of these categories, given the evolution of her interpretive methodology. Furthermore, even for the idealists, the Sunna is used more strategically when it bolsters their own interpretation of the Qur’an. See Chaudhry, 165 and 169, note 63.
“Embodied Tafsīr” Trumps the Law

Indeed, the non-binding nature of the law that seems to quietly pervade Shaikh’s writings becomes most apparent in one of her more recent articles, which examines the impact of Q 4:34 on a group of South African Muslim women who have experienced domestic violence. In this article, in addition to undertaking a feminist analysis of classical tafsīr on 4:34, she also adds her findings from a qualitative, ethnographic study in which she interviews eight women about their experiences with domestic violence, examining their conceptions of religious identity, marriage, community and religious authority and sexuality. Significantly, she finds that while women’s understandings of their religious identities and their role in marriage came primarily from religious teachings as reinforced by family and community leaders, in all but one of the cases, Q 4:34 was only invoked as a rationale for abuse after the women went to seek out the advice of their community clerics, with each woman rejecting this as an adequate explanation. One woman went so far as to strike out the verse in a copy of the Qur’an that she gave to a friend, stating, “After my experiences, I just refuse to accept that Allah allows or condones violence against women.” Shaikh claims that these survivors of domestic abuse, like contemporary Muslim women exegetes, see “an ethics of justice and fair treatment” as integral to Islamic revelation, and as a result their “experiential ‘tafsīr’ abrogated the literal and patriarchal readings of Q 4:34” presented to them by their community clerics. Arguing against the detached and ahistorical exegesis of male interpreters, Shaikh suggests that Muslim women’s experiences in and of themselves constitute a “mode of tafsīr” and that a more “expansive approach to tafsīr will allow contemporary Muslims to engage dynamically with Islamic ethics, Qur’anic texts and their embodied realities...” This seems to be an argument about the egalitarian “spirit” of Islam...

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223 See Sa’diyya Shaikh, “A Tafsīr of Praxis: Gender, Marital Violence and Resistance in a South African Muslim Community” in Violence Against Women in Contemporary World Religion: Roots and Cures eds. Daniel C. Maguire and Sa’diyya Shaikh (Cleveland, OH: Pilgrim Press, 2007). Although the article is published in 2007, the data in it hails from Shaikh’s ethnographic research at the University of Capetown, conducted while she was an MA student in 1997.

224 Sa’diyya Shaikh, “A Tafsīr of Praxis”, 86. This approach to the law among laywomen is the one that most resonates with the findings of my own ethnographic research. See Chapter 5.

overriding its more literal and accepted legal meanings, a feature which we have already noted in the writings of Wadud, Barlas, and even Mernissi to a certain extent.  

As Shaikh illustrates, the experiences of violence and abuse highlighted for these women the dissonance between what they expected of Islam and patriarchal ideologies that surrounded them. She states, “By instead practising Islam in empowering ways, they destabilized male-centred religious perspectives.” But what are the implications of, as Shaikh puts it, practising Islam in “an empowering way”? Does this mean an outright rejection of traditional Islamic legal practices, if they do not conform with contemporary notions of equality? If that is the case, what is the basis upon which Shaikh makes this claim? Is it the ‘spirit’ of Islam? Or is the point that she feels she does not need one, that much like the women in her sample she assumes “the capacity and the authority to act in [her] own best interest”? While this may indeed be a viable approach to dealing with Islamic law in the twenty-first century, the fact that she neither attempts to engage with a theory of law, nor directly rejects religious law as irrelevant either is intriguing. Much as in her other writings, references to law are mostly veiled and represented by other terms – she speaks often about “dominant power structures” and “patriarchal religious ideologies”, which could include law as well as other institutions. However, since she is speaking about community structures and marriages among Muslims in South Africa, she cannot avoid confronting Islamic law entirely, but again, the ways in which she discusses it are illuminating.

‘Official’ vs. ‘Real’ Islam

The first allusion to Islamic law arises in relation to the lack of training in pastoral care that characterizes the clerical community in Cape Town. Despite studying “Arabic language and the premodern Islamic legal and exegetical canon”, clerics serving the community had zero communication and counselling skills. Shaikh declares that they were missing “active

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226 See Wadud, Qur’an and Woman, 4; Wadud, Inside the Gender Jihad, 199; Barlas, Believing Women, 23, 68; Mernissi, The Veil and the Male Elite, ix, 155.


228 Sa’diyya Shaikh, “A Tafsīr of Praxis”, 89.

engagement with Islamic gender ethics as a living, dynamic and contextually unfolding phenomenon” which served to “present ‘official’ Islam as embodying “a stagnant, ahistorical perspective of gender born from patriarchal readings of the text.” While she has clear ideas of what ‘official’ Islam should be – and again, “official” could be understood as another code for legal or normative Islam – she does not really grapple with what it is. At the end of her article, she seems to suggest that the empowering Islam of these marginalized women, where masculinist discourses are rejected, is in fact the ‘real’ Islam. Anything that falls short of this may perhaps be understood as ‘non-binding’.

‘No Problems With Shari’ah’: The Continued Importance of Fiqh in the Lives of Muslim Women

Another example of this ‘real’ Islam comes to us courtesy of one of her respondents who has to assert herself when an imam approaches her with a plea that her violent ex-husband be allowed custody and access rights to their children. Shaikh explains that, at the time, South African law did not recognize as legitimate marriages performed solely by Muslim clerics, and

230 Idem.


232 Sa’diyya Shaikh, “A Tafsīr of Praxis”, 89. This notion of “written Islam, textual, ‘men’s’ Islam” as opposed to the “oral and ethical traditions of lived Islam” more associated with women has been noted in the writings of Leila Ahmed. See Women and Gender in Islam: Historical Roots of a Modern Debate (New Haven, CT: Yale University Press, 1992), 239 and A Border Passage: From Cairo to America – A Woman’s Journey (London: Penguin Books, 2000), 128.

233 As of this writing, South Africa still does not recognize these marriages, but for well over a decade, numerous attempts at drafting what is now known as the Muslim Marriage Bill were put forward in order to legitimize these unions and, arguably, offer more accountability, transparency, and rights to Muslim women. There were community consultations on the draft bill in 2011, with the expectation that it would become incorporated into law by mid-year in 2012. For more on the Muslim Marriage Bill in South Africa, see Ebrahim Moosa, “Muslim Family Law in South Africa: Paradoxes and Ironies” in Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges, eds. Shamil Jeppie, Ebrahim Moosa, Richard Roberts, ISIM Series on Contemporary Muslim Societies (Amsterdam: Amsterdam University Press, 2010).
consequently the mother was given full custody of her children who were deemed by the state to have been ‘born out of wedlock’. The woman recounts her experience to Shaikh,

He [the imam] told me “Shari’ah says that the father has rights over the children”....
“Shari’ah says this...and Shari’ah says that...”

I said, “Shari’ah is fine, I’m not arguing with Shari’ah, but I have a valid reason for not allowing him rights to the children. He is the father, but he is violent. I’ll never sign something like that.”

The woman’s response is indeed remarkable and it is shame that Shaikh does not spend more time either attending to classical Islamic legal conceptions of custody or deconstructing her respondent’s understanding of Islamic law. Applauding the survivor of domestic abuse for her resolve in the face of this unfair wielding of religious authority, Shaikh asserts,

By claiming that she had no problems with Shari’ah, she indicated that an ethical interpretation of religious law would not jeopardize her claims....she contested the cleric’s unjust and expedient invocation of the Shari’ah. She also challenged the religious authenticity of an imam who purported to represent an ethical Islamic position, but actually acted unjustly and connived to disempower her.

In Shaikh’s account, the imam is portrayed as lying to the woman and claiming that the document he has brought to her is legal whether she signs it or not. However, while it may not be legal from a South African secular law perspective, it may have indeed been irrelevant whether she signed it or not from the perspective of Islamic law. We do not know the age of the woman’s children, or whether they are boys or girls, but according to the Shafi’i school, boys and girls may choose their custodial parent. However, even if a boy chooses his mother, he is obligated to spend day-time hours with his father. Similarly, according to the Hanafi school, an independent boy (defined as aged seven or nine) and a girl who has already reached puberty

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234 Shaikh explains, that even under South African law, this soon changed and fathers too were granted some rights to their ‘illegitimate’ children. See Shaikh, “Tafsīr of Praxis,” 83.


236 Idem.

(defined as age eleven or nine) should be under the custody of their father. I only refer to the Shafi’ite and Hanafi positions because they are the dominant ones in the South African Muslim community; but regardless of the school one follows, one can conceive of a situation where child custody would automatically go to the child’s father from the perspective of classical Islamic law alone and the woman’s assent would not be necessary.

Furthermore, Shaikh’s argument rests on the fact that the imam’s position is supposed to be an ‘ethical’ one, but nowhere does she comment on the important interplay between law and ethics; as is the case in Judaism, much of the literature on ethics in Islam derives from classical jurisprudence. Furthermore, while law may strive to reach an ethical standard, conceptions of ethics change and often the law is slow to follow, if at all. The woman claims that she “has no problem with Shari’ah,” but if, by ‘shari’ah’ she means the law as interpreted by the jurists, then she, in fact, does have a problem with shari’ah. The most significant problem is that, unlike the textually-confident activists, scholars, and laywomen chronicled in this work thus far, Shaikh’s respondent does not, in fact, know what rights are in fact granted to her under shari’ah and how they may conflict with laws granted to her under a secular, common law regime. Shaikh suggests that, if shari’ah were interpreted ethically, the woman’s own claim to her children would not be disputed. But while her article engages with the importance of opening up tafsīr to marginalized voices, nowhere does she suggest that the same needs to be done for fiqh, which, whether misrepresented or not, clearly continues to have a place of importance in the most intimate aspects of South African Muslims’ lives. The woman in Shaikh’s study does not reject shari’ah entirely, but she does reject any conception of it that does not fit with her perception of Islam.

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238 See Jamal J. Nasir, “Custody” in The Islamic Law of Personal Status, 170-190; Mahdi Zahraa and Normi Malek “The Concept of Custody in Islamic Law” in Arab Law Quarterly 13.2 (1998): 168-196. Custody involves both hadana (emotional support and care) and wilaya (guardianship). The term wilaya also concerns marrying off one’s daughters and generally is considered the responsibility of the father.


We will note important differences between the knowledge level of and comfort with religious texts among Shaikh’s ethnographic subjects as compared to the laywomen I interviewed in Chapter 5, but conversations with practitioners in both cases clearly reveals that fiqh continues to have a place in contemporary Muslim communities even in Muslim-minority countries. Consequently, scholars such as Shaikh may want to turn their attention to fiqh as well, instead of simply ignoring or minimizing it. Mernissi, living in a Muslim-majority country, did not have the luxury of ignoring it, but Shaikh’s own work suggests that fiqh is still salient in a country where strictly speaking, it is not ‘binding’, much as we noted among North American women in Chapter 1.

**Experience vs. Law in Feminist Thought**

But Shaikh’s positing of women’s ‘experience’ as a “source of understanding and knowledge production” raises other interesting questions. Indeed, is experience at odds with religious law?

The results of Shaikh’s notion of an “embodied tafsīr” or “tafsīr of praxis” grounded in women’s experience could perhaps be seen as having much in common with Wadud’s invocation of Abou El Fadl’s “conscientious pause”, described earlier, which is applied when extra-textual indicators, or *adillah*, that inform one’s understanding of the divine, seem to conflict with conceptions of the divine within the text. The women’s own experiences of violence made any reading of Q 4:34 that condoned violence as unbelievable. The result was not a rupture with the Qur’an, but simply a striking out of the verse, perhaps akin to Wadud saying “no” to it, an assertion that this cannot be divine.

But it is important to note that, for Abou El Fadl, the conscientious pause is not be undertaken without “diligent and exhaustive investigation” and it is not a mere privileging of lived experience over law, but a questioning of whether textual indicators should be the only ways of comprehending the Divine. Most of Abou El Fadl’s work is about framing Islam in terms of the juristic enterprise and finding new ways to view it from within that scholarly and legally-informed vantage point; certainly, the work of the jurists is based on the very textual indicators

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242 See Chapter 2, 24.
that Abou El Fadl is suggesting one might want to “press pause” on, as it were. Nonetheless, he describes the work of the jurists as an active “search for the divine will” and “dialectical engagement with God.” He understands the text and the body of interpretive work surrounding it as different entities, with the latter being an interpretive experience of the divine. Given this portrayal of legal interpretation, and the narrow application within which his ‘pause’ would be applicable, for Abou El Fadl, experience and law are not incompatible. However, the question remains whether ‘experience’ still needs to be linked to textual and legal expertise for it to be a trustworthy indicator of the divine will.

Tafsīr of Praxis: Parallels with Plaskow’s ‘Feminist Midrash’

Nonetheless, the notion of women’s experience itself as an authoritative source of knowledge does share much in common with the early approaches of Jewish feminist theologian Judith Plaskow, a scholar who has long had a conflicted relationship with religious law in her writings. In a 1973 article, she too contrasted ‘women’s experience’ with ‘normative Judaism’. Plaskow longed to “speak words as women that will also be Jewish words” and felt that women’s experiences that were embedded in Jewish women’s histories might be the key to reforming tradition. While Shaikh seems to assert that the Islam of marginalized women is the ‘real’, ‘authentic’ Islam, Plaskow conversely intimated that Jewish tradition and women’s experiences were mutually exclusive. But they both privilege this ‘experience’ as superior to what has come before.

Plaskow herself recognized that ‘women’s experience’ was not monolithic, nor was it unmediated by socialization and language, but her use of the term was a product of the period in

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244 See Khaled Abou El Fadl, Speaking in God’s Name: Islamic Law, Authority and Women (Oxford: Oneworld Publications, 2001), 7.

245 It perhaps bears noting that in several newspaper interviews, Abou El Fadl has spoken of the need for Islamic legal development to be tied to textual expertise, and that ijtihad is, in fact, not open to all. See for example, David Glenn, “Who Owns Islamic Law?” Chronicle of Higher Education, February 25, 2005, http://chronicle.com/article/Who-Owns-Islamic-Law-/31045 (accessed 5 May 2013). While his work has been championed by many Muslim women’s groups, such as the Malaysian-based Sisters in Islam, his privileging of legal expertise left some women’s activists reeling, as his comments suggested that those without legal expertise perhaps had no business engaging in Islamic legal debates. So experience may indeed be very narrowly defined for Abou El Fadl, in that it is only a trustworthy indicator of divine will for those who also have in-depth textual and legal expertise.

which she was first writing. Shaikh, as a younger scholar, having cut her academic teeth in a time when post-colonial feminists had already challenged the essentialist, ahistorical and homogenizing aspects of the category of “woman,” would not dare suggest that all women have a common experience which needs to be incorporated into Islam if the tradition is going to meet the challenges of the twenty-first century. However, she does argue that experience itself counts as a type of interpretation which will allow contemporary Muslims to “engage dynamically with Islamic ethics, Qur’anic texts and their embodied realities.”

Like Shaikh’s ‘tafsīr of praxis’, Plaskow suggested ‘feminist midrash’ – a re-writing of biblical interpretative narratives to reflect feminist values and Jewish women’s stories – as a mode of forging forward and reintegrating Jewish women into a modern Judaism. Since midrash was based in the assumption that the biblical text could speak to the present day, “it can and must answer our questions and share our values...we wait for the words of women ‘to rise out of the white spaces between the letters in the Torah’ as we remember and transmit the past through ‘the experience of our own lives.’” Plaskow initially tried to divert the Jewish feminist conversation to questions of theology, which is arguably akin to Shaikh’s use of ‘religious anthropology’, to look at the gendered attitudes undergirding foundational texts. Arguing that rectifying the status and leadership inequities in halakha will not make the otherness of women disappear, she insisted on deconstructing male depictions of God and male authorship of the Torah as a first step in “restoring women to full personhood” in Judaism. However, Plaskow soon understood that she needed to return to the medium of law as well. In Standing Again at Sinai, she questions whether law itself is an appropriate form for female expression and defies...

247 See for example, the groundbreaking work of scholars such as Chandra Talpade Mohanty, bell hooks and Gayatri Spivak whose writings in the late 1980’s and 1990’s would alter the feminist landscape.

248 Shaikh, “Tafsīr of Praxis”, 70.


the assertion that without halakha there is no Judaism. Nonetheless, she acknowledges that even a feminist Judaism is “guided by certain norms and principles” and that if halakha is to have a future in a feminist Judaism, it would have to “begin with the assumption of women’s equality and humanity and legislate only on that basis.” Accordingly, even Judith Plaskow would begrudgingly argue that women’s experience and the law are not entirely mutually exclusive.

**Religious Law and Feminist Reform: Strange Bedfellows**

However, this strained relationship with law does once again bring us back to the question of why women – and women academics in particular – should continue to engage with Jewish and Islamic legal traditions at all. While questions of identity, community and belonging were certainly some of the reasons noted in Chapter 1 that laywomen remain committed to religious law, are there additional strategic reasons that women scholars might continue to explore the contours of it? While Shaikh’s reluctance to engage with legal discourse at all stands out in a chapter that more closely examines legal sources, we also noted in the work of Miriam Peskowitz a critique of both the structural inequities in traditional halakha – which make it irredeemable as a workable model today – and its continued “mystique” even in communities of Jews that no longer find it binding. Chapter 2 also examined the persistent discomfort with law at work in the scholarship of both Asma Barlas and Ilana Pardes. Barlas saw the legal tradition as tantamount to “textualized misogyny” and Pardes often seemed to regard religious law as synonymous with oppression and patriarchy. Indeed, given the often disastrous outcomes that Jewish and Islamic legal reasoning has yielded for women (see Chapter 1), it is a wonder that more feminist scholars do not disengage with it completely.

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256 See Chapter 2, 40.
Conclusion: The Strategic Use of Rabbinic and Juristic Precedent and its Limitations

So what does keep women scholars in conversation with the classical legal traditions of Judaism and Islam? As we have seen, Frymer-Kensky, Hauptman, Wadud, and Mernissi, strategically deploy the rabbis’ and jurists’ interpretive acts, appealing to them as authorizing examples of how contemporary practitioners can similarly interpret their way around difficult texts for women.

To review, Frymer-Kensky and Hauptman both understood halakha as continually relevant and central to the Jewish project in a way that Peskowitz and Pardes did not. While Frymer-Kensky’s scholarly works on the Bible suggest that biblical theology had a more egalitarian vision of men and women than the rabbinic system which would follow, in her writings on halakha, on the other hand, Frymer-Kensky does understand the rabbis as ultimately striving for a more ethical universe and adapting the halakha to suit the needs of the times throughout history. As she explains, “Halakha is noteworthy for the fact that it has historically been willing to sacrifice and to bend norms for the sake of relationships.” Surveying the ways that halakha has changed over time, and that this change was often instigated by women themselves, she proposes that women now need to work to make themselves ontologically equivalent to men in the system by “creating a situation where the whole system is endangered without this change”. However, she does not provide the means for doing so, nor does she suggest overhauling the halakhic system entirely. Indeed, for her, it is a system that is begging to be reformed, but it still seems to be binding, warts and all. However, her “somewhat incendiary conclusion” that women need to become the agents of change to “redeem themselves,” suggests perhaps that traditional structures of halakhic authority no longer hold.

260 Idem, 280.
Hauptman, likewise understood the Talmudic rabbis – who adapted what she understands as harsh biblical laws to be more amenable to women – as “fitting precursors” for contemporary Jewish feminists trying to make Jewish women “full-fledged members of the community.” However, as Dawn Robinson Rose has pointed out, since Hauptman’s halakhic investigation stops at the time of the Talmud and does not examine further how the halakhic system and philosophy developed over time, it has limited use in terms of actually instigating change. Indeed, many of the laws she examines in-depth, such as the case of the sotah, or suspected adulteress, while fascinating in marking a departure in theology from the biblical to rabbinic period, have no practical expression today. In a more recent article on the ordination of gays and lesbians, she insists that Jewish law already contains within it the mechanisms for change and echoes her earlier assertion that halakha evolves over time to encompass new ethical understandings. She too seems to regard traditional halakha as binding – indeed, as a Conservative rabbi herself, teaching at its flagship institution, The Jewish Theological Seminary, she seems to have a stake in its continued authority – but she also seems to regard it as malleable enough to “mature” and respond to the “ethical impulse[s]” of the community (in her case, the American Jewish community) it serves.

So while both Frymer-Kensky and Hauptman see Conservative halakha as binding, both also suggest that the system can and should be overridden if its leaders are not responsive to the changing needs of the community. Accordingly, even for them, it is perhaps the existence of legal argument and flexibility in the system in general more so than specific binding rulings that serve as a helpful reference in advocating for change. While both suggest that halakha itself provides a roadmap for reform, neither spells out exactly what change might look like on a large scale.

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264 Hauptman does offer a few rabbinically-sanctioned precedents for changing the status of a whole group of people that could extend to gays and lesbians, but she does not offer a comprehensive approach to halakhic reform. Rather, she seems to suggest that halakha be adapted on a case-by-case basis as needed. Incidentally, in appealing for the rights of gays and lesbians, she uses precisely the same examples that Frymer-Kensky uses in her article on women and halakha. See Frymer-Kensky, “The Feminist Challenge to Halakha” in Studies in Bible and Feminist Criticism, 264. See Judith Hauptman, “Ordaining Gay Men and Women.” (accessed 24 May 2012).
Similarly, Wadud and Mernissi see fiqh as having a central role in transforming Muslim women’s lives for the better. In addition to seeing the juristic precedent of limiting objectionable texts as a part of a trajectory of reform extending into the present, Wadud also understands Islamic law codes as being “re-writable” in a way that the revealed Qur’an cannot be and suggests that revising the law may be the best way to address the disadvantages faced by Muslim women today. Mernissi similarly invokes classical legal authorities such as Malik Ibn Anas and Tabari to illustrate that some long-established norms regarding women were perceived in a more complex way by these earlier authorities, and that the spirit of debate that they brought to foundational texts should be adopted once again by Muslims today. While Islamic law for Mernissi, as a Moroccan national subject to state law codes, is binding in a way that it is not for Wadud, as an American, Mernissi would clearly prefer a separation of religion and state when it comes to law; in the absence of state laws such as those of the Moudawana, which are so clearly based in Maliki fiqh, it is not clear to what extend she would willingly incorporate Muslim law into her life and accept it as binding. Conversely, the hope that Wadud seems to pin on a “re-written” law, suggests that she would indeed like to at least refer to it as a guiding principle or helpful reference in her life as an American Muslim. Again, both women invoke the latitude available in the Islamic legal heritage as a precedent for tackling present-day problems, but neither provides any concrete example for how to implement these necessary changes.

As we noted earlier, the writings of these women scholars are simultaneously addressed to lay practitioners as well as academic colleagues, and the analytical tools they use for making their arguments derive from both traditional and critical scholarly sources. Hauptman and Mernissi both read legal texts in a style that on the surface conforms with classical techniques and approaches, but they do so as academics who now have gender as a category of analysis as well. In some ways, their work involves both pushing and pulling – they illustrate the limits of the rabbinic and juristic enterprise vis-à-vis women, yet also gesticulate in their general direction at the same time, suggesting that classical legal texts already contain within them the solutions for tackling the very social inequalities created by them in the first place. Again, while Peskowitz and Shaikh as academics display an impressive mastery over the texts and contexts in their areas.

265 Wadud, Inside the Gender Jihad, 204-205.
266 See Mernissi, Islam and Democracy, 60.
of study, it is Hauptman and Mernissi – like Fymer-Kensky and Wadud – who exhibit the highest degrees of textual confidence, by using their painstakingly-acquired knowledge of legal sources to advocate for change within the scholarly and lay communities they feel they represent.

However, despite their textually-confident invocations of religious law, the works of Frymer-Kensky, Hauptman, Wadud and Mernissi still lack tangible and actionable guidelines for instigating reform. Accordingly, the writings of Kecia Ali and Rachel Adler examined in the next chapter are a welcome salve. Ali and Adler not only interrogate classical fiqh and halakhic discourses more directly in their work, but also question contemporary authority structures and provide concrete suggestions for renewing Islamic and Jewish praxis in present-day North America. As we shall see, it the work of this duo of scholars that perhaps provides the most relevant precedent for contemporary Muslim and Jewish laywomen contemplating the role of religious law and identity in their lives.
Chapter 4: “As If it Has Always Been This Way”: Kecia Ali and Rachel Adler Tackle Marriage Law Reform

Focusing on Law to both Embrace and Challenge It

As noted in the previous chapter, scholars such as Sa’diyya Shaikh and Judith Plaskow seem to pit women’s experience of Islam and Judaism against “textual”, “official” or “legal” Judaism and Islam. Scholars Kecia Ali and Rachel Adler, on the other hand, not only suggest that Islam’s and Judaism’s rich legal traditions should not be abandoned entirely by Muslim and Jewish feminists, but in the same breath, also illustrate how the old interpretive frames no longer work and that change is only really possible with systemic and structural reformulations of praxis. By looking in-depth at classical rabbinic and juristic writings, their respective works both highlight the importance of the halakhic and fiqh traditions and simultaneously reveal their flaws for contemporary religious practitioners. As Ali herself explains the paradox in her writing, she is “attempting to contest the jurists’ interpretive authority in part by focusing on them.”

Indeed, Ali and Adler have each insisted that fiqh and halakha respectively should not be ignored or simply rejected by progressive/feminist Jews and Muslims as it leaves these important institutions in the hands of an orthodox male elite. However, both also maintain that reinterpreting sacred texts is insufficient if it does not translate into concrete transformations in religious praxis. Consequently, although other feminist scholars have proposed simply amending or appending clauses to existing Islamic and Jewish marriage contracts or altering minor aspects of the traditional wedding ceremony, Ali and Adler each regard these cosmetic changes as inadequate attempts at marriage law reform, as they do not upset the fundamentally unequal conception of marriage undergirding these practices. Accordingly, as we shall see, Adler has

1 See Kecia Ali, Sexual Ethics, 159, note 19.
2 See Ali, Sexual Ethics, 155; Adler, Engendering Judaism, 25.
identified the need for halakhic renewal and suggested her *Brit Ahuvim*, an alternative marriage contract based in Talmudic notions of partnership rather than ownership, as a means of re-fashioning the Jewish wedding ceremony, while Kecia Ali encourages her audience to re-think the central place of dower (*mahr*) in Muslim unions and calls for the development of a new jurisprudence to better reflect contemporary concerns vis-à-vis Islamic marriage. This is perhaps the most sophisticated outcome of textual confidence among Jewish and Muslim women exegetes: the ability to not only use their understanding of law to reinterpret religious texts and practices, but to articulate authoritatively what a more inclusive and integrated halakha and fiqh could look like for contemporary practitioners.

Indeed, it is likely no coincidence that Adler and Ali make marriage, divorce and sexuality the primary targets of their reform, since, as we saw in Chapter 1, they are the issues most closely connected to women’s religious identities and the place where they are most likely to be affected by religious law in the secular-liberal environment of North America. Ali’s and Adler’s analyses get at the heart of questions of authority and what binds Muslims and Jews to their ancestral laws in a non-coercive context.

**Kecia Ali: Method and Critique of Islamic Marriage Praxis**

Kecia Ali explores in-depth the positions of the four Sunni legal schools on various matters pertaining to sexuality as well as the assertions of some modern-day scholars and authorities in order to “highlight striking inconsistencies in the way that several controversial topics are approached” in their work. By pointing out these uncomfortable discrepancies, she hopes to “shock” the reader into reconsidering familiar and apologetic discourses in order to challenge their uncontested dominance and minimize their power among the laity.

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5 Idem.
One of the inconsistencies that is central to her work is revealing the connection between *mahr*, the dower given to a Muslim bride by her groom, and a man’s right to unilateral divorce in classical Islamic jurisprudence. Ali points out that while many progressive Muslims and feminists are critical of the unilateral, extra-judicial repudiation of a wife by her husband, which is the most common form of divorce sanctioned by all schools of Islamic law, these same groups hold a sentimental attachment to the notion of mahr, believing it to be “a source of economic security for women and a token of a husband’s willingness and ability to provide.”

Ali points out that the entire structure of licit sexuality in classical fiqh was built around the notion of *milk* – domination and control – and was very closely linked to the relationship between slaves and slave owners. Ideas about marriage in classical fiqh are governed by the idea that a female slave was purchased and was therefore expected to be sexually available to her male master. Similarly, the dower “constitutes compensation paid by the husband for exclusive legitimate sexual access to his wife” and is linked to male initiated divorce; if he pays for the right to lawful intercourse, then he should be the one to end the marriage – otherwise, what is to prevent her from taking the dower money, which becomes obligatory after consummation, and then exiting the relationship?

Consequently, the husband is paying for a type of control. As Ali maintains, the system made conceptual sense in its time and any attempt to alter one aspect (unilateral male divorce), without addressing the other (the payment of dower) would alter the dynamic in incoherent ways.

In a similar fashion, Ali also undermines the proposals of scholars such as Azizah al-Hibri that a variety of stipulations be added to Muslim marriage contracts to bolster a woman’s rights within the traditional system, from clauses restricting polygyny to allowing women freedom of mobility. Ali points out that for all four Sunni legal schools, stipulations against polygyny in particular were not valid; the Hanbalis alone recognize a wife’s right to delegated divorce if her husband violates this aspect of the contract, but it would still not invalidate the second marriage.

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8 In this type of divorce, known as *talaq tafwid*, the husband delegates his right to divorce to his wife, should he violate a pre-set condition in their marital contract. However, Ali has further shown, if a wife has intercourse with her husband at the time when the condition is violated, even if she did not know that the contract was breached, she would lose her right to delegated divorce. See Ali, “Progressive Muslims and Islamic Jurisprudence: The Necessity
Furthermore, as Ali asserts no stipulation can address the core imbalance in spousal rights, which allows a husband to repudiate his wife at any time for any reason. Consequently, she holds that continued adherence to certain classical practices, such as mahr, or the inclusion of contractual conditions restricting a husband’s control in the marriage, are simply incompatible with other values and assumptions governing Muslim marital relationships in the twenty-first century. And since most Muslim marriages, especially those in the U.S., no longer follow the 9th century model laid out by the jurists, as Ali boldly contends, contemporary unions need “a different type of law.”

Ali’s Vision for “A Different Type of Law”

Although she is careful to point out that she is not formulating “a comprehensive program of religio-legal doctrine” in her text, she does make some tentative suggestions regarding reform in order to “move discussion of issues in sexual ethics beyond critique and toward possible resolutions of difficult problems.” In that vein, she proposes that one way to resolve the problems created by traditional forms of talaq in the U.S is that both dower and extra-judicial forms of divorce be excluded – since they are so closely linked in classical jurisprudence – and instead, only allow civil marriage and divorce to be recognized as licit. Since only civil divorce is recognized by American courts and since most American Muslim religious authorities already recognize a civil divorce as equivalent to a judicial divorce in Islamic law, this solution circumvents the awkward possibility of a couple being only divorced according to Islam while remaining married in the eyes of the state. And the elimination of mahr disengages marriage from the sex-for-money transaction by which it was originally defined.

Why Islamic Jurisprudence?

10 Ali, Sexual Ethics, xxviii.
11 Ali, Sexual Ethics, 37.
12 Ali, Sexual Ethics, 35.
So while Ali does point out the antiquated aspect of classical juristic thinking, and rejects any wholesale adoption of their philosophies, especially around intimate relationships, like Mernissi and Wadud before her, Ali similarly suggests that the jurists’ leniency and flexibility in certain matters should be understood as an example for Muslims today.

Despite the fact that, in her mind, the jurists’ ethical understandings often seem to depart from the ideals expressed in the Qur’an, Ali believes that the Islamic intellectual heritage is worth re-examining, and that it might provide “a framework for renewed and invigorated Muslim ethical thought”. Indeed, as she asserts, a closer look at the work of the jurists illustrates the way they used their own critical judgement and reasoning to adapt Qur’anic and Sunnaic injunctions to fit new circumstances. From this fact, she derives two conclusions: a) that certain regulations arose due to particular socio-political factors and, consequently, may not necessarily be regarded as eternally binding; and b) that the precedent of the early jurists “can authorize a similar interpretive and adaptive process for Muslims today.”

She is particularly critical of Muslim feminists who completely eschew the legal tradition, opting to derive their understanding of Islamic praxis from the Qur’an alone. She suggests that

...jurisprudential methods can offer much to Muslim feminists. Not because the rulings of the jurists are themselves egalitarian – for the most part, they are not when it comes to matters of gender and sex – but because the ways in which jurists have related source texts to social contexts demonstrates that the law they constructed has ‘always already’ been subjected to acts of interpretation.

She explains that their sophisticated methodologies, acceptance of divergent opinions and diligence in pursuit of the divine makes the work of the jurists worthy of study and the breadth and depth of subjects they covered allows for a true engagement with matters of ethics in a way that other Islamic sources simply cannot offer. Contending that, at its core, Islamic law is an ethical system rather than a strictly legal one, she is critical of dishonest and isolated citations of

14 Ali, *Sexual Ethics*, xxi. For an example of her invocation of juristic precedent, see her treatment of female genital mutilation, which is arguably sanctioned in the Hadith, but clearly approved of in classical Islamic legal sources. Although she generally questions whether statements attributed to the Prophet need to be considered applicable in all contexts, Ali also illustrates that “both hadith and legal texts seek to minimize the scope of cutting performed,” (111), making a similar move to the one employed by Wadud in the case of Q 4:34.
15 Ali, *Sexual Ethics*, 154
seemingly ‘egalitarian’ verses in the Qurʾan (or favourable comments in the Hadith) that do not take into account the larger, gender-differentiated, scriptural context. She charges that a smattering of unconnected verses is not tantamount to a coherent world-view. While she believes there is something to be said for fresh approaches to revelation, she insists that re-inventing the wheel is counter-productive, as generations of scholars have already grappled with these issues in some form. Accordingly, she follows Abou El Fadl in maintaining that, if one is going to forgo the rich, philosophical and theological analyses of the jurists, one should be able to explain precisely what he or she is rejecting.16

Ali cites two further reasons that feminists and other progressive Muslims should take the time to delve into classical fiqh works. As we have already noted, their assumptions and the frameworks they established in the formative centuries of Islam still inform modern discourses on sex, sexuality and marriage among Muslims, even when lay practitioners are not entirely aware of this fact. And finally, contrary to Shaikh’s position that the Islam of marginal women is, de facto, a more compassionate Islam, Ali suggests, in line with some of the suggestions of Mernissi, that the positions of the jurists were often more sympathetic to women than the cultural expressions of Islam that prevailed.17 Contrary to the perception of law as rigid, Ali attempts to show that “a legal methodology offers legitimacy for a flexible approach to the Qurʾan and the Prophetic sunnah as revelation that emerged in a historical context.”18

**North America and the Problem with Authority in Ali’s Writings**

But this question of the law and how it is viewed is intimately connected to questions of authority in contemporary Muslim communities. As we already noted in Chapter 1, in Muslim-majority countries, civil statutes often dictate Muslims’ perception of Islamic law. However, these codes tend to be a hybrid of Islamic law (or rather, the watered-down rulings of a particular madhab), customary practices and Napoleonic, Roman-Dutch, Ottoman and/or English common

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law, rather than deriving their authority from classical Islamic jurisprudence alone. The ‘ulamā’, although weakened as a source of authority in most regions, does continue to have some limited role in establishing the legitimacy of Islamic praxis. Still, as already noted, these regions have seen a new reliance on the Qur’an and the Sunna as foundational texts at the expense of the fiqh tradition and scholarly expertise. But rather than a return to the original textual sources leading to openness and debate, as one may have expected, the result instead has been authoritarianism – attempts to narrow the sphere of what is acceptable, and a concomitant de-legitimization of alternate perspectives, as pointed out by Abou El Fadl.

But the problem of authority is compounded in the West, where there are no Islamic civil statutes to draw upon, and no class of authoritative jurists that could historically be relied upon to grapple with traditional sources. As Abou El Fadl has observed, “the connections between the classical epistemological and hermeneutical heritage and Muslims living in the United States have been thoroughly severed.” Hence, the role of ‘authentic texts’ among Muslims in the West has been even greater than in Muslim-dominated populations, and American Muslims have found themselves turning in unprecedented ways to the Qur’an and the Sunna as authorities. It is for this very reason that Ali herself must spend time ‘justifying’ her use of sources beyond the Qur’an and ‘authentic’ Hadith. She addresses an invisible feminist interlocutor here when she asks,

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21 However, Ali has noted that the work of Zahra Ayubi on American Muslim women seeking divorce has shown that many immigrant women base their understandings of fiqh not on any classical school, but rather on articulations of marriage and divorce statutes from their countries of origin. See Kecia Ali, Sexual Ethics, 160, note 28.


23 Abou El-Fadl has described this as a “battle between the hadith-hurlers – each party surveys the traditions of the Prophet to find something that can be hurled at the opposite party, and the other parties, naturally, do the same.” See Speaking in God’s Name, xi.

24 This need for Ali to justify the use of Islamic jurisprudence in her work actually runs contrary to the findings of a recent survey conducted by the International Institute of Islamic Thought. Their review of Islam 101 classes taught in American universities, found that while male instructors tend to emphasize Islamic history, Islam and modernity and Islamic institutions, female instructors are more likely to press issues of gender, human rights, law and Shari’a. So although the Qur’an and Hadith remain more prominent in American Muslim discourses of authority and
If I do not accept the sole interpretive authority of the juristic and exegetical heritage – which is strongly patriarchal and sometimes misogynist - why not bypass it entirely...What is to be gained from focusing energy on analysis and critique of texts that I do not consider authoritative?  

So while Ali sees the jurists’ example as a helpful reference, their historic conclusions about praxis are not necessarily authoritative to her mind. But does that mean that she does not regard the law as binding? The answer to this question is not as straightforward as one might think.

**Is Fiqh Binding in ‘Post-Traditional’ Contexts?**

On the one hand, she comments that Muslims in “post-traditional contexts in the West” are free to apply Islamic principles as they choose. She explains that unlike those living in Muslim-majority contexts with coercive state powers, she has “the luxury of deciding whether and how to apply religious doctrines in my own life – whether to arrange my affairs to follow the dictates of one or another school of jurisprudence, or the regulations in the Qur’an, or to follow civil law.” Accordingly, she understands the voluntary nature of the law’s observance in North America and Europe as raising ethical or moral questions rather than strictly legal ones. But she also sees the drawbacks of this predicament, referring to the “confusing situation” created by “the coexistence of civil law with an amalgam of jurisprudential doctrines and Muslim conventional wisdom” that characterizes the relationship of American Muslims to Islamic marriage and divorce, but to all of Islamic praxis more generally.

While, as mentioned above, she offers no comprehensive framework for unravelling this confusing knot of competing legal systems and ideologies, the fact that she seems to privilege the

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American civil system when it comes to marriage and divorce over the Islamic one is perhaps telling.\textsuperscript{29} She does allow that couples should be free to “follow particular [Islamic] legal doctrines in their personal affairs,” but again, this suggests that adherence to Islamic precepts in the West is entirely volitional, aside from the moral weight given to them by individual practitioners.

On the other hand, while she acknowledges that American Muslims have adapted traditional marriage praxis to fit “prevailing legal, social and cultural norms”, the absence of a centralized authority is not tantamount to a legal free-for-all. Indeed, we see how the legal tradition does inform her choices, particularly when she is asked to officiate at a wedding, putting her in the reluctant position of quasi-religious leader.\textsuperscript{30} When the bride asks that the traditional requirement of two male witnesses be replaced by having one woman and one man serve as witnesses, Ali indicates that she does not feel comfortable going against the “consensus of the legal schools” or a tradition “from an early authority” that a marriage witnessed by one man and one woman was tantamount to adultery.\textsuperscript{31} After consulting with colleagues, she decides to resolve the issue by inviting the whole audience to serve as witnesses. Perhaps Ali’s careful adherence to fiqh guidelines in this instance is tied to the fact that the choices she is making are not hers alone, but rather could potentially invalidate someone else’s marriage.\textsuperscript{32} Nonetheless, her reticence to give and overstep “normative opinions” is clear here, since as she explains, unlike her male colleagues, she does not have “some semblance of traditional Islamic learning”

\textsuperscript{29} See “Ali’s Vision for ‘A Different Type of Law’” above.

\textsuperscript{30} As Ali points out, since, as in Judaism, a Muslim wedding is a contract between the bride and groom and their representatives, no religious officiant is required. However, it is customary and is recommended that a learned person be there to make sure all the technical requirements of the ceremony are observed. In the US, this role is generally filled by an imam, but a scholar of Islamic Studies is also often called upon to do it. As Ali, points out, there is nothing in traditional sources to prevent a woman from serving as officiant.


\textsuperscript{32} We saw in Chapter 1 the way fears about invalidating Jewish marriages lead to more conservative halakhic discourses pervading marriage customs even in more liberal denominations of Judaism. See page 4, note 9.
in addition to her academic credentials.\textsuperscript{33} So whether she really understands fiqh as binding in her own life, it is clear that law matters at the community level, and perhaps, without the legitimacy and recognition by that community, one cannot simply change the rules willy-nilly. Despite her own rigorous engagement with traditional legal material, she has difficulty self-identifying as a religious leader; she recognizes that she lacks “the beard and turban, the traditional symbols of Islamic authority,” and consequently struggled with how to look sufficiently commanding to play the part that was being thrust upon her.\textsuperscript{34} Nonetheless, she also concludes that “scriptural learning and solid command of Arabic” are a decent replacement for the aforementioned male accoutrements and go far in establishing one’s authority and legitimacy in solemnizing a public, community ritual such as a wedding. At the end of the experience, she seems convinced that action is far preferable to endless debate; if you want to instigate reform, the best option is to just do it. But she is not oblivious to the larger questions regarding authority and communal change undergirding her foray into religious leadership. As she astutely observes, “something important was being negotiated. How much can or should historical practice shift to reflect contemporary realities? What is essential and what can be modified to suit new sensibilities? And, always, who has the legitimacy to determine the answers to these questions?”\textsuperscript{35}

\textbf{Ali’s Rethinking of Authority Structures: Leaving Behind ‘the Beard and the Turban’}

While she seems to want to recuse herself from having the authority to make these types of decisions, she sees it as imperative that thoughtful discourse on the nature of authority and reform begin to take place in American Muslim communities.\textsuperscript{36} While Ali indicates there are a

\begin{itemize}
  \item \textsuperscript{34} She notes, quite correctly, that a wedding is “part performance.” On wedding rituals and performativity, see J.L. Austin, “Performatory Utterances” in \textit{Philosophical Papers}, eds. J. O. Urmson and G. J. Warnock, (Oxford: Oxford University Press, 1961).
  \item \textsuperscript{35} Idem.
  \item \textsuperscript{36} See Ali, \textit{Sexual Ethics}, xxviii, where she makes it clear she is not a “jurist, Qur’an scholar or ethicist” nor is she trying to “do” jurisprudence.
\end{itemize}
few formal institutions in the US for receiving an Islamic education, and that some American Muslims are fortunate enough to have an imam or local scholar whom they trust, who can explain core teachings while engaging with modernity in complicated and sophisticated ways, she comments that most people are left to their own devices to determine “which religio-legal precepts to observe and which should be allowed to slip into disuse”. She laments the fact that “there has been little public discussion at all of what role religious leaders should play in Muslim life in the West, how they should be chosen and trained, and ultimately what type of authority they should wield.” Indeed, most imams serving congregations are foreign-born and trained, and currently, there are no U.S.-based schools for accrediting imams per se. She sees reinterpretation of the sources as being both an individual as well as a communal project, and believes that the isolating of timeless principles from historically-contingent injunctions, as per Rahman, must be a key strategy in any Islamic reform program. However, she also cautions that these principles need to be deeply rooted in the established tradition and need to be acknowledged as intrepretive moves rather than framed as obvious and simplistic expressions of ‘what Islam is’. She further underscores that along with ‘traditionally-trained’ religious scholars, both Muslim feminists and women in general need to be part of the conversation about renewing Islamic sexual ethics if Islam is to continue to be dynamic and relevant in America. So while ‘the beard and the turban’ continue to hold sway in contemporary North America, Ali –

37 It is not clear what Ali means here by “formal institutions of Muslim religious learning” in the United States. Is she referring to one of 235 Muslim day schools captured in a recent Islamic Schools League of America study or is she speaking of small training initiatives for imams such as the American Islamic Finance Project, which provides banking and interest-related guidelines to imams in the United States or even the still in-development ‘muftiyya’ program sponsored by WISE (Women’s Islamic Initiative in Spirituality and Equality), and run through the New York-based ASMA society, which aims to train Muslim women as jurists and religious scholars. See Yvonne Y. Haddad and Jane I Smith, “Introduction: The Challenge of Islamic Education in North America” in Educating the Muslims of America, eds. Yvonne Y. Haddad, Farid Senzai and Jane I. Smith (New York: Oxford University Press, 2009), 11; “The Muftiyya Program” <wisemuslimwomen.org> (accessed 5 May 2012)

38 Ali, Sexual Ethics, 2.


40 Although Claremont Theological School in California did begin a program in the fall of 2010 to offer accreditation to Protestant, Jewish and Muslim clerics. Muslims can complete a Masters degree in “Religious Leadership in Muslim Contexts” See Claremont Theological Seminary website (accessed 1 June 2012) <claremontlincoln.org/> Similarly, Zaytuna College, in Berkeley, CA, although currently unaccredited, hopes to provide clerical studies to Muslim religious leaders. See< zaytunacollege.org>
through her writings and her own, albeit, reticent leap into the arena of ritual activism – seems to suggest that as new voices in the American Muslim community are heard, traditional markers of religious identity and expertise will need to make way for alternate visions and new models of Islamic religio-moral proficiency.  

**Rachel Adler: Method**

Like Ali, Rachel Adler too confronts legal texts most directly in her work, and her relationship with them is similarly reconfigured. Adler illustrates both that the old system is broken and shows us more concretely what a new system might look like. While she does not abandon the halakhic system entirely, for her, the precedent of the rabbis is insufficient in a contemporary context. Adler’s earliest writings – in the same vein as Frymer-Kensky’s “incendiary conclusion”– suggested that if the male rabbinical establishment could not find a way to include women, “the most learned and halakhically committed among us [women] must make decisions for the rest.” As we shall see, over thirty years later, Adler responds to her own challenge and reformulates the halakhic system, perhaps concurring with Ali that sometimes direct action is the only way to bring about change.

Adler’s work truly exemplifies the multi-disciplinarity that we have noted among other Jewish feminist text-scholars. Feminist criticism, literary theory, narrative theory, American legal theory, ritual theory, and psychoanalytic theory are just some of the tools she utilizes to re-read rabbinic and biblical texts. She even appeals to a hermeneutic of laughter at one point to expose the absurdity of male anxieties embedded in rabbinic discourses. She sees this plurality of methods as helping to reveal the text’s silences, so that one does not collude with the text to keep the experiences and voices of women invisible. As Adler explains, multi-disciplinarity breaks

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41 Several American Muslim women academics have, in recent years, taken similar leaps into the world of ritual activism. We have already noted Amina Wadud and Kecia Ali, but other Toronto-based academics such as Laury Silvers, Nevin Reda have also taken steps to either lead prayer or give pre-khutbah sermons, in addition to writing academic articles which support these practices using classical Islamic sources. As Juliane Hammer points out in a new book, Muslim women’s exegetical work on the Qur’an has provided the basis for these forays into ritual activism. See Juliana Hammer, *American Muslim Women, Religious Authority and Activism: More than a Prayer* (Austin, TX: University of Texas Press, 2012).


43 See Rachel Adler, *Engendering Judaism*, 16-17. She refers to the uproarious laughter unwittingly produced by rabbinic narratives when read by contemporary readers as “a gift from feminist Torah”.

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the hegemony of any single code for deciphering the text and enables us to “maintain the otherness to approach critically an androcentric tradition in which we are nevertheless passionately invested.”

**Critique of Traditional Halakha**

However, as a self-proclaimed theologian, she sees her goal as slightly different from other academics; not only does she wish to critique androcentric structures and categories, but also to begin “mending and healing Judaism by encountering, renewing, and reclaiming the holiness in texts.” She sees the renewal of the halakhic system as the first step in this project of healing. Like Ali, she understands this task as a deeply ethical one to be negotiated through communal conversations that “re-examine the values and priorities enunciated in Jewish tradition in light of the current needs, injuries, or aspirations demanding to be addressed.” Believing that a commitment to justice embedded in Jewish teachings obligates members of Jewish communities to remedy gender inequities, Adler acknowledges and sympathizes with the difficulties that halakha, in particular, has caused for women. As she explains, “for most of Jewish history, the lives of Jewish women have been controlled by a legal system whose categories and concerns they have not helped to shape and from whose authority structure they have been excluded.” Referring to halakha as “the feminists’ elephant in the living room,” she explains that various attempts to dispense with it entirely have not been successful. Indeed, as already noted, Plaskow raised the spectre of whether or not law was a meaningful medium for women, and further argued that even if halakhic inequities were corrected, this would not address the otherness of women deriving from conceptions of God as male and the exclusively male authorship of the sources. Adler assimilates into her own work Plaskow’s contention that

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45 Adler, *Engendering Judaism*, xxv.


49 She bases this on the findings of Carol Gilligan who, argued that the moral universe of girls and women is based on connection and relationship building rather than hierarchy and rigid boundaries. See Gilligan’s *In A Different
women’s inequity in Judaism is a theological problem and not simply a halakhic one, and agrees that simply amending or updating isolated practices to be more inclusive of women does not affect the systematic treatment of women as objects rather than normative subjects of the law. Accordingly, Adler asserts that the classical halakhic system is simply unable to confront new circumstances without first reformulating them “in distortive androcentric terms that would allow it to apply its own categories and advance its own goals.”  

However, while Adler rejects band-aid solutions, since they reinforce the system’s structural and conceptual hierarchies, she does not reject the notion of halakha completely, arguing that “[halakha] is the authentic Jewish language for articulating the system of obligations that constitute the content of the covenant...A halakah is a communal praxis grounded in Jewish stories.” She suggests that when communities discard halakha entirely, they are stifling their ability to live out their Judaism.

Adler urges progressive Jews to reclaim the term halakha, contending that as a ‘path-making’ enterprise, it “translates the stories and values of Judaism into ongoing action,” and since the stories of Judaism belong to no one denomination, Orthodoxy should not have a monopoly on its use. She proposes a framework for a new halakha, which can integrate the living praxis of Judaism in the contemporary world. She laments the fact that Jewish practice has become so fragmented in modernity, with some observances having been taken over by the secular state, while other rituals were abandoned for fear of looking foreign, or worse still, ‘Oriental.’

Although Kecia Ali acknowledged the confusion caused by competing legal and moral visions among contemporary American Muslims, she did, to a limited degree, seem to celebrate the luxury to pick and choose which practices to keep in the absence of state-sponsored Islamic legal codes. Adler, on the other hand, sees the ensuing “grab bag of practices” in Judaism as

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*Voice: Psychological Theory and Women’s Development* (Cambridge, MA: Harvard University Press, 1982), 10. However, as mentioned earlier, even Plaskow admits that feminists too have commitments to law and that claiming all women are entirely anti-nomian is to suggest women’s innate nature is antithetical to legal reasoning. See Plaskow, *Standing Again at Sinai*, 65.


disorienting and unsustainable.\textsuperscript{54} For Adler, since classical halakha no longer reflects values such as equality, respect, inclusivity and diversity – values that progressive Jews have come to espouse – it can only be left intact if practitioners “split off our religious lives from our secular lives and live two separate existences with two different sets of values and commitments.”\textsuperscript{55} Longing for a unified, communal praxis that embodies contemporary ethics, Adler seeks to integrate all the parts of her life, from making love, to reciting blessings, to volunteering at an AIDS hospice, so that they become “part of the same project: the holy transformation of our everyday reality.”\textsuperscript{56}

\textbf{The New Halakha and the Problem of Authority}

But what would give this new praxis authority and grounding?

Unlike traditionalists who accept the narrative that the law – both Written and Oral – was revealed at Sinai, liberal and progressive Jews (with whom Adler identifies) understand the law as having been shaped by certain socio-historical and cultural circumstances. While Orthodoxy will also allow that certain laws, such as takkanot, were introduced by the rabbis in order to address certain socio-cultural and political factors, there is still a sense that even these laws were anticipated at Sinai, and that when the time is right, these measures will be reversed to reflect that earlier articulation of the law.\textsuperscript{57} Accordingly, Orthodoxy can justify incremental adjustments to the halakhic system, since is it invested in the notion of revelation being an ongoing process; hence, prevailing human interpretive efforts and enactments of legislation are understood as ‘divinely inspired’ to a certain degree, and remain the closest approximation to the divine will that humanity can achieve.\textsuperscript{58} However, as Adler points out, for progressive Jews belonging to Conservative, Reform and Reconstructionist movements who have debunked the traditional founding narrative of Judaism, who assert that the Torah is a composite document

\textsuperscript{54} Adler, \textit{Engendering Judaism}, 26.

\textsuperscript{55} Idem.

\textsuperscript{56} Idem.

\textsuperscript{57} See y. \textit{Pe ‘ah} 2:17a

\textsuperscript{58} See Chapter 3, note 64 on the notion of ‘cummulative revelation’ in traditional Jewish thought.
compiled by men “and not a verbatim record of what God told Moses on Mount Sinai, what obligates Jews to obey, and how are they to sort out what they are to do?”

Adler’s Halakhic System: Premised on Cover’s Law as Bridge

Adler notes the trend among contemporary halakhicists of appealing to Anglo-American legal theory to help address the question of authority and what might bind practitioners to a system that is no longer understood as divine. She illustrates the way past attempts to adapt traditional halakha have been unsuccessful in their reliances on a strange fusion of positivist and realist legal positions. As an alternative Adler too employs a model from Anglo-American legal theory, but appeals to what she understands as the more “proactive” approach to law-making envisioned by Robert Cover. In his well-known article “Nomos and Narrative,” Cover appeals to Jewish law as an example of a law enforced not through state authority and power, but through a legal community’s collective commitment to uphold certain values voluntarily. As a counterpoint to what he calls the “jurispathic” tendencies of the court to impose one legal ruling/interpretation while suppressing other competing visions of normativity, he offers the rabbinic system as an example that tolerates a multiplicity of interpretation and variations in practice (interpretive and behavioural pluralism) while managing to maintain coherence. As the

59 Adler, Engendering Judaism, 31.

60 Legal formalism maintains that a law is valid as long as it properly applies the rules and categories of the system, while legal realism appeals to the socio-cultural and historical realities in which a legal system is applied and invests power in judges to alter the rules as they see fit. Adler notes in particular the approach of Joel Roth whose project of halakhic reform blends these philosophies by combining the notion of Hans Kelsen’s grundnorm, or the basic assumption that formally grounds a legal system, with the idea of judicial discretion. For more on Roth’s approach, see Joel Roth, The Halakhic Process: A Systemic Analysis (Jewish Theological Seminary, 1986), 9-10, 81-113, 151. For Adler’s critique that Roth’s argument is tautological and that his view of a qualified judge only reinforces existing power structures, see Adler, Engendering Judaism, 32-33.

61 Adler, Engendering Judaism, 34.

title of Cover’s work implies, each of us inhabits a nomos, a world of normative ideas and values that is undergirded by a particular narrative, a discourse that is bound by history, language, culture and context. For Cover, there is a dynamic relationship between the paidaic mode, which generates the shared values, precepts and stories that make up the nomos upon which the law is based, and the imperial mode, which seeks to maintain and enforce the law. The tension created between the world of meaning and the world that strives for harmonious coordination and enforcement of all is varying parts is likened to a bridge in Cover’s work. The idea of law as a bridge allows Cover to view the law as a continuum of possibility, imaginatively moving us from our current reality to a potential “alternity” that might be reached in the future.  

Adler finds this metaphor of law-as-bridge particularly helpful for her own project, as it provides a means for bridging the gap between the existing reality she lives in (classical halakha) and alternate realities that she could inhabit (a new halakha); thus, the law can be rejected if it no longer suits the needs of the existing community and can be replaced with new alternatives. As Adler explains, “ultimately, law is maintained or remade not by orthodoxies or visions but by commitments of communities either to obey the law as it stands or to resist and reject it in order to live out some alternative legal vision.”

For Cover, new legal visions emerge out of old ones – or as he puts it, “every legal system emerges out of something that was once unlawful” – and narrative, as the basis of law, is also the most effective tool for destabilizing it in order to facilitate a move towards “alternity.” Accordingly, Adler suggests, much like Peskowitz, that feminist readings of legal narratives can be used strategically to reveal the constructed nature of the law, and hence, begin their very unravelling. Since narratives are developed in space and time, their meanings are inherently unstable; consequently, if the meaning of a narrative changes over time, the law based on that system, and also obscures the role of a deity in traditionally giving “teeth” to the system, making the comparison to a secular legal regime awkward at best.

64 Rachel Adler, Engendering Judaism: An Inclusive Theology and Ethics (Boston: Beacon Press, 1998), 35.
65 Cover, “Nomos and Narrative”, 23. As we saw in the work of Pardes, Cover illustrates the way this phenomenon is at work in the Torah itself – several of the narrative components of the bible run contrary to its legal precepts (i.e., David’s heir is born of his illicit relationship with Bathsheba; Tamar tricks her father-in-law to get out of the uncertain status she has been put in levirate limbo.
same narrative would be rendered transparent, as neither “natural” nor “inevitable” but intentionally crafted to reflect a particular worldview. In this way, once the timebound nature of the text’s meaning is revealed, one makes room for other possible meanings and legal visions.

But while feminist textual analysis would be a key tool in helping one traverse Cover’s bridge of possibility, Adler does not provide further direction for how her communal vision might be adopted or implemented, how it might be structured, who would spearhead such an undertaking, and what its decision-making processes might look like. But she does not quite leave us with a ‘bridge to nowhere’ either; rather, she does provide an important mechanism for reforming her own ‘system’ through a “metadiscourse provision.” As she explains,

...we could open up halakhic discourse and shape it to address the needs, desires and obligations of diverse, gendered people inhabiting specific times and places. A provision allowing for metadiscourse would enable us to avoid the methodolatry that uses rules, definitions, and theological loyalty oaths to exclude the data and perspectives of women from the conversation...any vital concern in the lives of community members could be articulated and heard....A metadiscourse provision would allow us to examine and renegotiate framework components, to reassess questions of textual authority and interpretation, and to reevaluate who are included in the definition of community. The result would be more flexible boundaries permitting a more inclusive and expansive halakhic discourse.  

Like a sunset provision or ‘notwithstanding clause’ built into a piece of secular legislation, Adler’s metadiscourse provision would allow one to reassess the new framework’s principles to ensure that they continue to reflect those of the community it is meant to serve. Although this notion is still vague on precise details, the allowance of a self-reflective metadiscourse provision could, as Adler points out, keep the system open and shield it from the stultification and rigidity which so characterizes classical halakha in the present age.

**Ross’ Critique**

But for some, this is perhaps too open a model. Although Orthodox Jewish feminist Tamar Ross appreciates Adler’s continued appeal to sacred Jewish texts and her dependence on halakha as the centrepiece of any meaningful Jewish reform, Ross finds Adler’s theology wanting. As Ross explains, “a halakhic narrative that completely dispenses with transcendence...and leaves all its

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interpretation’s claims to authority up to contemporary communal life and its interpretive ingenuity will inevitably lose its fervour and passion – and the reason for its existence.” 67 While Ross sees Adler’s halakha as a hollow, impoverished one, with no divine being at its core, Adler herself seems to see every interpretive act as a theological moment. As she tells us in her introduction, every text demands that we ask, “What is God telling us through this story? What are we telling God through the story?” suggesting further that the interplay between sacred narrative and lived praxis is what allows God “to become present in our midst.” 68 Although not explicitly stated, since law and story, nomos and narrative, are so deeply entwined for Adler, her comments can be read to imply that the creation and implementation of law itself is a manner of invoking the divine. 69 Still, Ross’ contention that Adler’s vision is “amorphous” and that “more substance is required to fill in the gaps that Adler leaves between real and ideal” 70 may not be off the mark. 71 Although Adler does not provide a detailed manual for step-by-step halakhic reform, she does tackle one particularly problematic area in great detail: the Jewish wedding ceremony. As a concretization of the alternate legal vision that Adler proposes, she offers her Brit Ahuvim, a ritual meant to correct the antiquated and non-egalitarian principles embodied in traditional Jewish marriage, or kiddushin, and its attendant problems of unilateral divorce.

If It Walks like a Duck: *Kinyan* and the Objectification of Women

As Adler explains, the Jewish wedding ceremony contains both a legal transaction and a liturgical component. While the liturgical component envisions marriage as “a covenant between two partners who chose each other” akin to the relationship between God and Israel in the

68 Adler, *Engendering Judaism*, xxv.
69 Cover himself was certainly understood as conceiving of the law as “messianic” and as enabling society to move, in a teleological fashion, towards more moral expressions, although he tried to divest these ideas of their religious underpinnings. See Suzanne Stone, “In Pursuit of the Counter-text,” 106; and Wizner, Stephen, "Repairing the World Through Law: A Reflection on Robert Cover's Social Activism," Cardozo Stud. L. & Literature 8: 10 (1996), 10.
70 Ross, *Expanding the Palace*, 167-168.
71 However, a recent thesis by Rachel Timoner as part of her requirements for rabbinical ordination explored ways that Adler’s vision could be implemented through active community engagement and ‘self-organizing systems’ such as on-line blogs, so that small communities of Jews could begin their own conversations about halakhic commitments and decision-making in the 21st century. See Rachel Timoner, “Finding Our Way: Creating Liberal Halakha,” Unpublished thesis courtesy of Rachel Adler (27 February 2009).
writings of the biblical prophets,\textsuperscript{72} the existing legal contract does not “accurately reflect the kind of marriage to which egalitarian couples mean to pledge themselves.”\textsuperscript{73} Dating back to the time of the Mishnah, it was agreed that a marriage could be formalized in one of three ways: through sexual relations, the drawing up of a deed, or the exchange of money. Although all three methods were religiously sanctioned at one time, the former two methods were not looked upon very favourably, and ultimately, initiating a marriage through the provision of something of monetary value, namely a ring, became the normative practice, although rabbinically, it was agreed that only a token sum needed to change hands for the transaction to be valid.

According to classical halakha, the ring must be owned by the groom and accepted by the bride. Through this action, the groom, in the words of the Talmud, “acquires” the bride, in a process known as kinyan. This kinyan, was in many respects not dissimilar to the acquisition of a field; and in fact, it is from biblical laws governing the purchase of land that the rabbis derive the law of betrothing via money to begin with.\textsuperscript{74} However, the Talmudic rabbis also attempted to show that, despite the monetary metaphors, this acquisition is not a purchase of goods that can easily be returned. Rather, by renaming the entire marriage ceremony kiddushin, they meant to convey that through this particular type of acquisition, the woman is now ‘sanctified’ (mekudeshet) or ‘set-aside’ for her husband, and has become off-limits sexually to any other man.\textsuperscript{75} Adler illustrates the ways in which “the language of kiddushin transmutes biblical acquisition but does not invalidate it...it affirms that the acquisition of wives is inherent in the very nature of the cosmic order.”\textsuperscript{76} Accordingly, she does not mince words with contemporary apologists who attempt to downplay the language of acquisition used by the rabbis and who maintain that the

\textsuperscript{72} To be fair, the portrayal of the God-Israel relationship as a marriage is not without its problems, as many feminists, including Adler, have noted. With God portrayed as the husband, and Israel the wife, the implications that human husbands are to be treated as god-like by their wives is not a far stretch and presents a myriad of theological problems for women. See Adler’s analysis of the marriage metaphor in the Book of Hosea in “Justice and Peace Shall Kiss: An Ethics of Sexuality and Relationship” in \textit{Engendering Judaism}, 156-167; also Plaskow, \textit{Standing Again at Sinai}, 128-134; and Naomi Graetz, \textit{Silence is Deadly: Judaism Confronts Wifebeating} (Jerusalem: J. Aronson Publishing, 1998), 36-51.

\textsuperscript{73} Adler, \textit{Engendering Judaism}, 170.

\textsuperscript{74} Adler illustrates the way the woman-as-land metaphor wends its way through other Jewish legal discourse. See Adler, \textit{Engendering Judaism}, 176-177. Ali makes a similar point in \textit{Sexual Ethics}, 130.

\textsuperscript{75} See b. Qidd. passim

\textsuperscript{76} Adler, \textit{Engendering Judaism}, 175.
process of kinyan is merely symbolic today, having no connection to its original, more literal meaning. As she explains, “the view that literal and figurative uses of terminology are arbitrary and unconnected would have astonished the rabbis of the Talmud, for whom etymological relationships, associations, and even puns had profound theological and legal significance.”

In other words, no matter how one dresses it up, the kinyan – which remains integral to the ceremony – involves the man’s ‘acquisition’ and the bride acquiescence (her silence, as mentioned earlier, is tantamount to consent), and one cannot simply erase its attendant universe of meanings, evoking the purchase of slaves, land and cattle, or in Adler’s words, “the comforts and assets of the patriarchal household.” For this very reason, Adler sees little utility in attempts to infuse the existing ceremony with more egalitarian touches (examples include: double-ring ceremonies, where both bride and groom make the traditional declarations of acquisition; creative ketubot with wording reflecting values of egalitarianism and mutual commitment; and ceremonies where brides recite verses from the Song of Songs after the traditional ketubah has been read). As Adler explains, all of these well-intentioned innovations “are halakhically impotent. They leave the legal structure of kiddushin intact, and that structure, with its implicit definitions of the marital relationship, legally supersedes any personal statements the bride and groom make to one another.”

The Brit Ahuvim

As we shall see, Adler’s wedding reform functions in two ways: a) it re-calibrates marriage as a partnership of equals, more attuned to contemporary Jewish American values and b) it removes the need to file for a religious divorce, which, as we have noted in Chapter 1, traditionally presented several obstacles to women. In these respects, Adler’s new ritual accomplishes the same tasks as Ali’s suggestion that American Muslims choose civil marriage and divorce, which would be recognized by Muslim authorities but would, at the same time, eliminate the inequities

77 Adler, Engendering Judaism, 176.
78 Adler, Engendering Judaism, 177.
79 Adler, Engendering Judaism, 191.
of mahr and unilateral male divorce. However, where they differ is that Adler seeks to accomplish this within the framework of authentically religious language.

Rather than basing marriage on laws of ownership, as the existing halakha does, Adler’s Brit Ahuvim is premised on partnership law, and the process two people engaged in to cement a business relationship. She finds this halakhic model amenable and adaptable to a marital relationship because it acknowledges the economic component of a marriage, while at the same time, the original laws were structured around the partners’ needs for both autonomy and interdependence. Furthermore, the original transaction for forming a partnership was not unlike the legal transaction formalizing a marriage, as it involved the following three elements: a partnership deed, a statement of personal undertaking, and a kinyan, or symbolic acquisition of the partnership, which was effected through the pooling of resources in a pouch and lifting it together. Adler’s Brit Ahuvim incorporates all of these elements and structures the contract, which she calls a shtar brit (covenant document) as a commitment that the partners make to one another as well as to the community in which they live, specifying “standards of righteousness” as well as the personal desires and stipulations of the partners. She includes a list of recommended stipulations that speak to the couple’s exclusivity as well as their familial and communal obligations.

Balancing Continuities with Innovations

Like Ali, who feared that, as an officiant without the traditional markers of authority, she would not bring enough gravitas to the wedding ceremony, Adler recognizes the importance of tradition and familiarity in authenticating a religious ritual. While Adler is not a fan of the double-ring ceremony as a corrective to the bride’s passivity in the ritual, she nonetheless does understand the symbolic weight of the ring itself, “[the ring] is not just a minor detail of the ceremony; metonymically, it represents the whole affair.” Consequently, she does not attempt to eradicate the practice of ring-giving entirely – as Ali suggested with the removal of mahr from the picture – but rather seeks to incorporate it into the ceremony in new ways so that it has meanings.

80 For the traditional laws of partnership, see Shulhan Arukh, Hoshen Mishpat, Hilchot Shutafut.
81 See Adler, Engendering Judaism, 194. For the sample of the whole ceremony and a copy of the brit document, see 197, 214-218.
82 Adler, Engendering Judaism, 195.
divorced from its original context. She suggests that rings can be added to the bag of pooled resources that constitutes the kinyan, along with other personal items that have shared or individual significance for the partners. Attentive to the observation of anthropologist Barbara Meyerhoff, that “a ritual should seem as if it has always been this way,” she designs her ceremony so that it has many continuities with the original, including the recitation of the traditional ‘seven blessings’, the blessing over the cup of wine, and the shattering of the glass, which has become an iconic symbol of Jewish weddings. 83

However, she also underscores how the new ritual is different. Namely, the brit document is not to be understood as serving the same purpose as a traditional ketubah. Rather, the brit document …effectuates a partnership of equals. A ketubah, on the other hand, does not effectuate kiddushin. That is accomplished by the husband’s statement, ‘Behold you are sanctified unto me’... and by his giving and her accepting the ring. Only then does the wife acquire the ketubah, for its function is to moderate the husband’s power over his acquisition. 84

Similarly, the kinyan is not to be understood as an acquisition, but rather as a pooling of resources between partners, as explained above.

Get or No Get?
Hence, if there was no ‘acquisition’ as part of the ceremony, strictly speaking, this was not kiddushin. As a result, it does not require a traditional get to be dissolved and either partner can initiate the end of the relationship. She suggests a process involving a tribunal of three learned Jews, akin to a rabbinic court, in which the partners lay out division of assets as well as custody and access arrangements and recommends that all of this be included in a Hebrew document drafted by the makeshift court and then signed by two witnesses. She even suggests that if the couple has difficulty in making decisions about property division or custody, they should look to a mediator or arbitrator to assist them. 85 While not discounting the possibility of registering one’s marriage with the state so as to make it official for secular authorities, it is interesting that

83 Adler, Engendering Judaism, 197.
84 Adler, Engendering Judaism, 196.
85 She also suggests that the end of the marriage could be marked by a time of mourning, similar to the traditional Jewish practice of shivah, where family and community members could come comfort the separating partners. See Adler, Engendering Judaism, 198-199.
she proposes a religious solution, rather than merely a civil one, for divorce. Perhaps because she sees the Brit Ahuvim as a commitment to community, it can only be properly ended with the help of the very community that enabled its establishment. Like the marriage itself, it too is public and therefore must be documented and recorded communally. Indeed, this fits with her goal of integrating Jewish praxis into all aspects of one’s life.86 While many feminists have criticized the use of faith-based arbitration as yielding inequitable results for women,87 the difference in Adler’s model is that the couple would not be bound by traditional halakha and could conceivably divvy up their belongings according to whatever principles they choose, including secular family law.88

However, one problem that remains is that even if the partners to a Brit Ahuvim do not regard it as kiddushin, traditional rabbinic authorities may continue to do so. Although a ruling in the

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86 In Adler’s criticism of the Reform movement’s response to turn over responsibility for divorce to civil authorities, she states, “To be sent to secular authorities to dissolve a holy covenant is the ultimate abandonment by the Jewish community, the quintessential silent treatment.” See Adler, Engendering Judaism, 201. However, while Adler wants to establish continuities with tradition, perhaps this proposed ‘dissolution’ ceremony has too many parallels with a traditional get and may invoke some of the hierarchies implicit in the original divorce proceedings. While witnesses seem critical to the process to avoid some of the problems that have arisen for Muslim women in cases of undocumented ‘triple talaaq’, when a Muslim husband denies having pronounced an irrevocable divorce decree, why call upon a tribunal of “learned Jews” to oversee the divorce? Why not employ lawyers or other professional mediators along with a trusted rabbi to assist in the process? Can one be sure that these scholars, however progressive and enlightened, may not inadvertently reinscribe the power dynamics of traditional halakha so that the results tilt in favour of the male spouse, given that that is the primary precedent that they would have to work with? If the kinyan involving the pooling of resources is what formalizes the relationship, why not develop a similar ceremony, where the same bag is emptied before a group of witnesses, to signify the end of the partnership? Since the values and explicit principles of a “new halakha” are still quite murky and can conceivably mean different things to different people, putting the termination of an intimate relationship in the hands of a group of scholars, even if the process was initiated by the couple, does seem like a risky venture. Still, I do appreciate the delicate balancing of tradition with innovation that Adler attempts to strike with her vision of new Jewish divorce.

87 See Chapter 1, also Renu Mandhane, “The Trend Towards Mandatory Mediation: A Critical Feminist Legal Perspective” (Ontario Women’s Justice Network website, August 1999) (accessed 9 June 2012) ; Hilary Linton, “Screening for Power Imbalances in Family Law Cases” Riverdale Mediation website, January 2012 (accessed 9 June 2012). Some suggest that even secular arbitration/mediation plays into existing power dynamics in male-female relationships, especially when issues of violence are at play, and that women may be ‘highly encouraged’ to contract out of rights that they might otherwise not give up. However, as has also been pointed out, the same power dynamics are not limited to alternate dispute resolution processes and can be even more pronounced in adversarial court proceedings. See Marion Boyd, Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion (Ontario Ministry of the Attorney General, Queen’s Printer: 2004), 104-106.

88 Ali herself is against faith-based arbitration or ‘shari’ah tribunals’ in North America, as the qualifications of arbitrators could not be guaranteed and there is a real danger that women will not get “a sympathetic interpretation of doctrines understood to be Islamic.” She also fears, that if popularized, the tribunals would be perceived as a “mark of faith, and those who choose not to will have to contend with accusations of not being good Muslims.” See Sexual Ethics, 38.
Shulhan Arukh suggests that any marriage contracted without the intention to establish kiddushin was equivalent to zenut, or illicit sexual behaviour, many traditionalists continued to regard any sexual intercourse occurring between a heterosexual couple as equivalent to establishing kiddushin. This ‘pan-kiddushin’ position, as Adler refers to it, enables some Orthodox rabbinic authorities to regard even non-halakhic marriages as kiddushin and to insist that a halakhically sanctioned get be obtained as well. As noted in Chapter 1, out of a fear of the serious social consequences of mamzerut, and to ensure that all Jews may continue to marry one another, regardless of denominational affiliation, leaders of more liberal Jewish movements continue to encourage their members to incorporate a ketubah into their ceremonies and to seek a get upon the dissolution of their relationship. Although Adler resents the monopoly on marriage and divorce that the Orthodox pan-kiddushin position necessarily entails, she herself acknowledges that people who live in a nomos together are interdependent. Our hermeneutical commitments and their behavioural consequences affects our neighbours’ lives as well as our own...In order for Jews from differing communities to continue to marry one another, we need some basic agreement on standards for defining, effecting and dissolving marriages.89

She suggests that pilagshut, or the practice of concubinage, in which, according to some opinions, was like a marriage, but involved no ketubah and no kiddushin, was a third halakhic category, distinct from kiddushin and zenut, upon which the Brit Ahuvim could be modelled. While she acknowledges that egalitarian couples may resent the idea of likening their committed relationship to a long-term lease, which, historically denied the female participant in the relationship any meaningful rights, the mere existence of a third category for Adler provides “a halakhic opportunity to save the collective of Israel, klal Yisra’el, from the very catastrophe traditionalists have been predicting for it,” by continuing to allow diverse groups of Jews with different theological and ideological commitments to marry one another. Accordingly, Adler’s vision for a new halakhic praxis is still, in many ways, in direct conversation with the values and theological underpinnings of the classical halakhic system.

Conclusion

89 Adler, Engendering Judaism, 202.
Clearly then, gaining recognition and legitimacy, not just from her own immediate interpretive community, but from the larger Jewish public as well, matters here, just as it did for Ali. Adler strives to construct her Brit Ahuvim in a way that will prompt the wedding guests to “leap up and shout ‘mazel tov!’” rather than just shrugging their shoulders that “it’s a free country.” But as Ali observed, it is precisely the fact that it is ‘a free country’ without coercive state visions of what constitutes Jewish or Islamic marriage, that enables practitioners to choose to adhere to or to transform their religious praxis to begin with. For both Jews in the State of Israel and Muslims in Muslim-majority countries where personal status laws continue to be defined by orthodox male elites, such custom-made articulations of religious law would have no legitimacy, and when it comes to something as important as marriage, most citizens would be unwilling to take such high-stake risks. However, in North America, where traditional authority structures are muted, and a power vaccuum exists, Adler and Ali are free to step in and offer alternate visions of how religious law can continue to be meaningful in a post-traditional, post-Enlightenment context. While both grapple with the problem of community recognition and who gets to speak with an authoritative voice about the future of their respective communities, Adler seems to more comfortablly wear the hat of theologian, at this stage in her long career, while Ali

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90 Adler, Engendering Judaism, 195.
91 Indeed, recent cases and developments in both Israel and Egypt attest to how dangerous it can be to challenge religious authorities as well as their views on marriage. In 1995, Egyptian scholar Nasr Hamid Abu Zayd was declared an apostate by the Egyptian court after a group of Muslim scholars started a hisbah trial against him for his controversial religious views on the need for socio-historical readings of the Qur’an. The doctrine of hisbah is meant to ensure that shari‘a is being upheld by the state, and at the time of the Abu Zayd case in Egypt, any person could initiate such a proceeding against another (today, it is at the discretion of the state). Since a Muslim woman cannot be married to a non-Muslim, Abu Zayd’s marriage to his wife was deemed by the courts to have been annulled. See Kilian Balz, “Submitting Faith to Judicial Scrutiny through a Family Trial: The ‘Abu Zayd Case’” in Die Welt des Islams New Series, 37:2 (1997): 135-155.

Similarly, in Israel, since marriages between Jews and non-Jews are not recognized by the state, prior to applying for a marriage licence, hopeful brides and grooms must prove they are Jewish by including a letter from an Orthodox rabbi attesting to that fact or establishing that they have converted. While many secular Jews born in Israel must struggle to find an Orthodox rabbi who knows them and their families well enough to provide this documentation, for converts the system is even more problematic. Under the Law of Return, which fast-tracks Israeli citizenship for Jewish immigrants to the country, a Jewish conversion in any of the major denominations is regarded as valid enough to entitle you to Israeli citizenship. However, non-Orthodox conversions are not recognized by the Chief Rabbinate, leaving converts in the uncomfortable position of not being able to marry another Jew in the State of Israel. To complicate matters further, in recent years the Rabbinate has been tightening its criteria, even going so far as to overturn some Orthodox conversions. Since a legal loop-hole requires the state to recognize as valid any marriage contracted outside of the country, many Israelis travel abroad to tie the knot. See Nathan Jeffay, “Rabbincal Court Puts Thousands of Converts in Legal Limbo” (8 May 2008). http://www.forward.com (accessed 16 July 2010); Amiram Barkat, “Rabbinate No Longer Recognizes Overseas Conversions” (23 May 2006). http://www.haaretz.com (accessed 15 July 2010).
is less ready to claim the same label for herself. As we shall see in the next chapter, the existence of denominations in Judaism, and the fact that Adler can find some communal support for her vision within Reform Judaism and other progressive Jewish movements may also account for this difference in how far these two scholars are willing to use their textual confidence to push for change.

Indeed, these questions pertaining to contemporary authority structures, communal supports, and the degree to which religious law is binding in North America addressed most directly by Ali and Adler is taken up in the next chapter by Jewish and Muslim laywomen who had spent time studying classical religious texts not only within their own faith community, but also in a Jewish-Muslim interfaith context. As we shall see, this interfaith study in many ways sets the laywomen apart from the exegetes we have studied thus far, since as already noted, none of these scholars had spent time reading one another’s works across disciplines, nor had any of them been involved with academic initiatives such as Scriptural Reasoning, which encourages Jewish, Christian and Muslim scholars to read one another’s sacred texts. However, in many other respects, the laywomen we will encounter in Chapter 5 have taken their cues from these scholars and, in the absence of well-defined authority structures or trustworthy community leaders, they have, in the words of Tikva Frymer-Kensky, “redeemed themselves” and made themselves interpretive authorities on matters of law and practice. As we shall see, their confidence that they know the ‘meaning’ of the texts and of the law has many parallels with Sa’diyya Shaikh’s notion

92Scriptural Reasoning or “SR” involves small groups of Jewish, Muslim and Christian scholars who combine their knowledge and commitment to their respective textual traditions with their discipline-specific expertise in order to read the scriptures through those various lenses. The group, in various forms, has been meeting annually since 1995. Although other Jewish and Muslim women scholars who identify as feminist have participated in these meetings over the years, none of the female exegetes described in Chapters 2-4 have been involved in the group. For more on the philosophy and practice of Scriptural Reasoning, see); Ochs, Peter. “Introduction” in Textual Reasonings: Jewish Philosophy and Text Study at the End of the Millennium. Edited by Peter Ochs and Nancy Levene. (Grand Rapids, MI: Eerdmans, 2002).

Nonetheless, long after the publications of Engendering Judaism and Sexual Ethics in Islam, Adler and Ali would, in 2009, be provided with another forum through which to study religious legal texts together in an interfaith context. That year, they were invited to participate in the University of Toronto’s Jewish and Islamic Legal Reasoning Project, an initiative sponsored by the Social Sciences and Humanities Research Council of Canada (SSHRC), overseen by Robert Gibbs and Anver Emon, and in which I was involved. In addition to studying texts together, the two women also participated in a public panel on gender and law, called “(En)Gendering Legal Analysis: Feminist Approaches to Jewish and Islamic Legal Sources”. University of Toronto, May 26, 2009. See http://www.cjs.utoronto.ca/event/2009/05/engendering-legal-analysis-feminist- (accessed 3 June 2013).
of “embodied tafsīr,” that their own lived experiences and private study are sufficient as sources of authority and guidance. 93

93 This is markedly different from Ali, who one would argue, is sufficiently learned to make these decision yet is wary of doing so, and Adler who took almost 30 years to proffer a model for resolving tensions between halakha and contemporary secular values.
Chapter 5
‘Textual Confidence’ Among Jewish and Muslim Women

In *Inside the Gender Jihad*, Amina Wadud noted that somewhere between the publication of her first and second book, she realized that she needed to abandon her “ivory tower approach” and delve into the messy sphere of “Muslim women’s lives.”¹ This dichotomy between the academy and the real lives of women suggests that there is little to no overlap in the concerns and text-wrestlings of laywomen and scholars. However, as this chapter will illustrate, some of the strategies used by Jewish and Muslim women academics in the previous chapters to navigate their way around difficult texts do indeed resonate with laywomen in both traditions. As we shall see, an emphasis on the ‘spirit’ of the law, in particular, is one that is shared by both women academics and lay-practitioners. This spirit behind the texts allows women to remain within a framework of praxis and religious law, while at the same time giving them some flexibility and breathing room to adapt ritual behaviour when the texts conflict with their personal convictions or conceptions of God. Indeed, while the texts continue to serve as a constant touchstone for most, those women who have been grappling with religious texts since their childhood read with the highest degrees of textual confidence. Like many of the female exegetes we have explored thus far, these laywomen feel empowered to interpret and apply the texts as they understand them, with little recourse to other sources of authority. As we shall see, more often than not, textual confidence is a license to employ Sa’diyya Shaikh’s “embodied tafsīr” and Judith Plaskow’s “feminist midrash” in readings of classical texts. However, while the women of this study share Shaikh’s and Plaskow’s discomfort with religious legal discourses, they prefer to redefine the law, rather than jettisoning halakha or ignoring fiqh altogether.

Accordingly, this chapter will focus on Jewish and Muslim women’s experiences of studying traditional religious texts together. It will explore women’s conception of religious texts; their positionality vis-a-vis the texts as readers and interpreters; knowledge of and relationship to feminist and academic interpreters of traditional texts; their understandings of religious law,

relationship to traditional Jewish and Islamic praxis; and their conception of one another as mediated through an interfaith textual encounter. As we shall see, participants’ experiences of texts are moderated by multiple factors, including geographic and educational backgrounds, conceptions of gender, personal convictions as well as ties to communal trends/institutions, and perceptions of religious authority; all of these play a role in the potential formation of textual confidence. But as we will also note, laywomen’s conflicted feelings about religious law most commonly derive from their experiences in three key areas: access to prayer, diet, and modesty/sexuality.

The first half of this chapter will attend to the relationship between women, religious texts, law and authority, while the second half of the chapter will focus more on the group dynamics of the interfaith encounter and how that similarly affects engagement with texts, law and praxis. While a feminist lens gives rise to certain critical readings of traditional texts, an interfaith lens adds another layer of analysis through which to view and critique one’s relationship with religious law.

**Recurring Motif: The Rule of Law**

Given that our text-study sessions involved the contrasting of material from two traditions with such a strong religio-legal focus, it is perhaps not surprising that religious law was a repeatedly invoked presence in these meetings. Even sessions which seemingly focused on narrative texts could not avoid broaching legal topics. A discussion of a hadith about ‘A’ishah’s childhood and marriage to the Prophet at the age of nine inevitably spawned a dialogue about the minimum age of marriage in Islam and Judaism and what constitutes ‘consent’. Similarly, a biblical text examining Abraham’s relationships with Sarah and Hagar led to a discussion of unilateral divorce laws in Judaism and Islam since the text mentions Abraham having relations with Hagar after “ten years of living in Canaan,” and according to later Jewish law, ten years of childlessness would become grounds for a man to divorce his wife.

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2 See Taped Session on “Beruriah And ’A’ishah Texts”, 17 February 2009. The hadith under discussion was from *Saḥīḥ Bukhārī* 5:58:234.

3 See Taped Session on “Sarah and Hagar Texts”, 6 October 2009. The text under discussion was Genesis 16:3.
The 'Rigidity' of the Law

But what arose somewhat fluidly in a group setting was much more fraught when broached in private interviews. Interestingly enough, the women’s individual statements about the law often seemed to belie the actual role of religious praxis in their lives. Abstract, open-ended questions about how the women would characterize their relationship with halakha and fiqh led to descriptions of religious law as “strict” and “rigid”. In fact, the words “strict”, “strictures”, “constricted” and “restrictions” came up approximately 20 times in the 16 interviews I did. Other words and terms women used to discuss halakha and fiqh included “hemmed in”, “the small details”, “nuts and bolts”, “picky”, “technicalities”, “peripheral” and “incidental.”

There was a general pushback against rigidity in the women’s comments about law. Rachel suggested that she didn’t believe in Judaism “with an iron fist” and Lejla insisted that “God is not going to hate me” if she didn’t get up for 3:30 a.m. prayers. Natalie lamented that for some Jews “[halakha] is all about check your vegetables for bugs and all these strict, strict things.” But Yasmin was perhaps the most eloquent in expressing her position that religious law should not constitute an inflexible narrowing of possibilities.

My own personal belief is that laws have been taken to such a ridiculous extent that rather than helping you come closer to God, it’s taking you away....I try to keep it to the minimal that I require to keep me from going off... It’s like if I have a wide road, I’m not going to carve a small kind of path in the centre and make sure I stay on that. I know I have the road. [emphasis mine what emphasis?]

Yasmin’s analogy is an interesting one, because both halakha and shari’a do indeed connote ‘path’ and it is certainly a matter of interpretation to determine how wide the path can be.

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5 Interview with Sophie. 12 June 2012.
6 Interview with Nuria. 27 Aug 2011.
7 Interview with Ariel. 16 Aug 2011.
8 Interview with Mona. 6 Sept. 2011.
9 Interview with Joanna. 5 June 2009.
10 Interview with Abigail. 14 Jan 2010. To be fair, Abigail did not understand all religious law in the same way. She repeatedly differentiated between “ethical” laws and laws that are “incidental to morality”.
11 Interview with Yasmin. 16 Jan 2010.
Law and the Mistreatment of Women

Still, for other participants, it was more than the obsession with details and the rigidity that made religious law seem so unpalatable; rather, it was the unequal treatment of women in the law that left them feeling betrayed by their tradition. Nuria painfully acknowledged, “I have had moments of severe doubt about my faith because of the way that women are treated.”

Similarly, in discussing divorce laws in Islam, Joanna asserted, “It is so unclear and because so many of the interpretations are so demeaning to women, I just don’t have time for that. I’m fine with a civil divorce.”

For Sophie, her community’s attempt to tinker with traditional definitions of minyan, the traditional quorum needed for public Jewish prayer, did not go far enough,

> The minyan thing really catches in my throat... It’s not a compromise. It is bullshit. I don’t like it.... I think there is still a serious fight in terms of [women] being allowed certain obligations in this community that I find myself in. There are still things to fight. Which is kind of weird. That’s not what I grew up with.

Indeed, as Sophie’s comments make clear, despite the participants’ very strong – and mostly negative – opinions about halakha and fiqh in the abstract, traditional rituals which are mandated and elaborated on in Judaism and Islam’s legal literature marked all of their lives in significant ways. These are not women who are estranged from their communities and traditional praxis.

In fact, they are deeply engaged with them. Perhaps not surprisingly, women’s leadership of and participation in prayer, dietary laws, and definitions of modesty and sexuality came up most often as the issues with which women were actively struggling. As we shall see, the women’s interaction with and understanding of texts very much informed these ideas about law as well which elements of traditional Jewish and Islamic praxis they chose to adopt and adapt. At this

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12 Interview with Nuria. 27 Aug 2011.
13 Interview with Joanna. 5 June 2009.
14 Traditional halakha requires ten adult males over the age of bar mitzvah to be present before certain prayers can be recited publicly. Following the innovation of Jerusalem synagogue Shira Hadashah, a community which tries to reconcile halakhic practice and feminism, Makom, the Toronto congregation frequented by Sophie mandates that 10 men and 10 women are what constitutes a minyan.
15 Interview with Sophie. 12 June 2012.
16 Following from the preceding chapters, I am employing Rachel Adler’s conception of praxis as “more than the sum of the various practices that constitute it. As praxis is a holistic embodiment in action at a particular time of the values and commitments of a particular story.” See Engendering Judaism, 26. For more thoughts on this use of ‘praxis’ as it relates to academic ritual theory, see Conclusion.
point, we will examine the participants’ biographies and their engagement with scripture in more
detail. As already noted, conceptions of gender, access to religious education, and identification
with community were all factors in establishing “textual confidence”, which in turn affected how
one engaged with law, religious praxis and religious authority.  

Textually Speaking: Women’s Encounters with Jewish & Islamic Texts
The women’s relationship with, experiences of and facility with traditional religious texts varied.
But for most participants, the opportunity to study texts was a primary reason for joining and
remaining in the group, although, as we shall see, an attendant interest in Jewish-Muslim
relations was very much at play as well. The group members all had some basic form of religious
education, most of them having been exposed to religious texts and teachings as children. While
I expected one’s cultural background to influence textual access, I was surprised by the role that
geography played in these discussions. Since the ethnic backgrounds and nationalities of the
Muslim participants were more diverse than those of the Jewish women (see ‘Ethnographic
Appendix’), their religious educational experiences were also more varied.

Geographic and Educational Background: Muslim Participants
Nuria and Lejla who both grew up in Toronto had attended an Islamic day school program
(Nuria attended from JK-grade 9, while Lejla attended from grade 8-12) where prayer and
religious subjects, which included Qur’an, the study of Arabic, the sira of the Prophet and
Hadith, constituted about one hour per day. For Mona who had grown up in Cairo, Islamic
studies, about an hour and a half per week, also constituted part of the curriculum in her public
school. Hafsa and Zahra, on the other hand, received their Islamic education through
supplementary religious school programs. Hafsa would spend her days at a Malaysian secular
school, while her evenings were spent at a special government-sponsored after school program,
where from the age of 6-12, she would learn Qur’an, Arabic and the Sunna of the Prophet. On
the other side of the world in Kingston, ON, until the age of 17, Zahra attended a weekly

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17 This ran in two directions. The way they understood the texts influenced their relationship with religious
authority, and the way they conceived of religious authority affected their relationship with the texts.
Saturday program at her local mosque, “led by people in the community who were engineers and computer programmers,” which consisted of Arabic lessons, Qur’anic study and prayer.  

However, for a few of the Muslim women, an Islamic education was not part of their daily or weekly schedule growing up, but rather something they had to seek out on their own. Yasmin, who attended a secular public school and a Jain secondary school in Nairobi, began Qur’an classes at the age of five but, because her parents were separated, “neither could decide who was responsible for the Qur’an teacher”, so that part of her education ended up being a casualty of their divorce. Although she could make out the basic Arabic letters and had her own copy of *SaḥīḥSaḥīḥ Bukhārī* (“It’s something that everyone in my community would have”), much of her Islamic education would come much later, when she began talking classes on Islam and Islamic history in university. An interest in Shi’ism that she developed as an adult would lead her to the library to take out an English translation of Tabari’s *Tarikh*, “I read some of that, especially the key turning points, like after the Prophet’s death and so on and so forth, and that helped me to question the Sunni standpoint.” Eventually she would choose to adopt Shi’i practice. Similarly, although Petra and Joanna did not grow up Muslim, both had read the Qur’an on their own while attending university. For Petra, a childhood fascination with the Arabic language would inadvertently lead her to Islamic Studies courses. She took on Islamic practices very gradually, beginning by reading the Qur’an all the way through “back to front... I never managed to do that with the Bible”, and eventually began reading Hadith on her own as well, mostly from *Saḥīḥ al-Bukhārī*. Since she had grown up with no religion, she did not regard herself as a convert. Joanna on the other hand was a very active member of the United Church growing up in Barrie, ON. Although she had difficulties with the church theology, her questions on issues of faith and doctrine were encouraged by community members and she was considered a model youth leader. She had always a particular passion for interfaith and intercultural initiatives organized by the church, but her interest in Islam would develop after meeting a Pakistani-born Muslim man in a class on Muslim politics in university. As she explains,

> It got me studying and thinking and talking to him a lot so it got me more interested in Islam, I kind of went deeper and deeper and studied it a little bit from the academic side and then I started reading the Qur’an, just to find out what is this all about. I just felt from the beginning... and it was mainly the Qur’an, I just felt

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18 Interview with Zahra, 20 May 2009.
there was this powerful voice in it that I felt was true... something really deep and profound and authentic I could feel coming from that.19

But university courses on Islam, Islamic history, politics and philosophy were also a critical means for those who had grown up with traditional texts to continue enhancing their familiarity with classical sources and interpretive works. Mona, Lejla, Nuria, and Zahra also reported taking courses on Islam and Islamic history in university, with Mona, Zahra, and Lejla making Islamic Studies the focus of their graduate and undergraduate degrees. Women’s halaqat, traditional Islamic study circles – several of which were loosely affiliated with a university-based organization, such as the Muslim Student Association – were another important forum for participants to continue their Islamic education as adults, with Mona, Lejla, Nuria, Zahra, and Hafsa all mentioning having had some involvement with a women’s halaqa in the recent past.

Geographic and Educational Background: Jewish Participants

As for the Jewish participants, seven of the women had gone to a Jewish day school for at least one year of their education, and four of them had attended a supplementary ‘religious’ school either on the weekend or for a few hours a week after their day at a conventional public school. Ariel and Rebecca had received a Jewish day school education from kindergarten through to the end of high school, while Rachel and Talia had gone to day schools for most if not all of their entire primary education (Rachel went from JK-grade 8, while Talia attended from JK-grade 6). At these schools, which were all based in Ontario (three in Toronto, one in London), Hebrew language, literature, history, as well as the study of the Hebrew bible, commentary, and Jewish holidays and customs (which sometimes was taught as a course on “Jewish law”) made up half the day’s curriculum. Sophie attended a Toronto Jewish day school for four years of high school, while Natalie spent two years of primary school at a Toronto Jewish day school and Tamara went to day school in Maine (“the only one in my state”), for one year, but all three also attended a supplementary ‘religious school’ program at their respective synagogues until the age of 15 or so. These programs varied but often consisted of learning basic Hebrew, bible stories, prayers, holiday practices and sometimes Jewish history and ethics as well. Abigail is the only interviewee whose early Jewish education came primarily from a supplementary Jewish studies

19 Interview with Joanna, 5 June 2009.
program at her Reconstructionist synagogue in Philadelphia. Again, university provided an important forum for women to access more Jewish texts and learn about them in context: Rachel, Ariel, Tamara, Sophie, Abigail and Natalie had all taken classes on Jewish languages, literatures, philosophy and history, with Ariel and Tamara each doing a major and minor in Jewish Studies respectively. Ariel explains how surprised she was at the amount of information she learned about Judaism in these university classes,

I took Jewish Religion in 2nd Year. I took it more as a bird course then I ended up learning up so much of my religion that I just didn’t know before. About the slide to the right, and Reform. Not that I didn’t know about the Reform [movement] before, but I learned about my religion from an entirely new perspective and it kinda reinvigorated my religion. Then I started learning more about religion and orthodoxy and finding out there was new opportunities for women.  

Rachel, Rebecca and Natalie further enhanced their engagement with classical texts by attending intensive yeshiva-style programs for a period of time in Israel. Rachel and Rebecca had spent some time at Pardes, a post-denominational, co-educational, Jerusalem-based yeshiva and Natalie had attended a summer program at Mayanot, an Orthodox women’s seminary affiliated with the Chabad movement, an Ultra-Orthodox Hasidic group with global satellites focused on bringing non-affiliated Jews back to traditional Jewish practice. Rachel, Tamara and Sophie had also participated in text-focused classes for adults run through their synagogues and other Jewish community institutions such as Kolel, a non-affiliated Jewish cultural and educational centre founded by Toronto rabbi Elyse Goldstein, the first female rabbi in the city.

In the cases of both the Jewish women and Muslim women, informal learning opportunities at conferences and retreats such as Reviving the Islamic Spirit (Toronto), The Havura Institute

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20 Interview with Ariel. 18 August 2011.

21 According to sociologist Steven M. Cohen, ‘post-denominational’ refers to committed Jews who have ideological differences with the four conventional denominations of modern Judaism, while ‘non-denominational’ refers to those that are largely disillusioned by organized Judaism and would otherwise identify as ‘secular’. See Steven M. Cohen, “Non-denominational & Post-denominational – Two Tendencies in American Jewry,” in Contact (Summer 2005): 7-8. Like the Drisha Institute in New York, Pardes’ ‘post-denominational’ status is a bone of contention for more liberal students who participate in its program. Although not expressly affiliated with any specific denomination, it is committed to traditional halakha. Consequently, while it tries to accommodate the spiritual needs of everyone, and provides space for students to run non-traditional services, the majority of the institute’s resources go towards maintaining the halakhic status quo. As it explains on its website, “we are committed to Jewish practice as prescribed by Halacha (Jewish Law), and this is reflected in our official activities and events.” (accessed 20 Aug 2012) <www.pardes.org.il>
(New Hampshire), and Elat Hayyim (Connecticut) also provided opportunities for studying text more closely.

**An Informed Laity: The Importance of Contemporary Feminist and Scholarly Writings**

In addition to having had exposure to classical Islamic and Jewish texts, the women were also extremely well-read in general and had explored, either on their own or through the auspices of a class, the works of several modern or contemporary Muslim and Jewish scholars and academics. The writings of these scholars most certainly shaped the way the women engaged with their traditional texts. The work of Amina Wadud came up most frequently among the Muslim women – in fact, she was referenced in all but one of the eight interviews conducted with Muslim women – but several Muslim participants had read Asma Barlas, Kecia Ali, and Khaled Abou El Fadl as well. Other academics referenced include Ingrid Matteson, Mohammed Fadel, Sherman Jackson, as well as scholar-theologian figures such as Abdallah Bin Bayyah, Hamsa Yusuf and Sayd Kutb. The writings of former-Muslim, politician and activist, Aayan Hirsi Ali, who although not a scholar per se, also figured very prominently in Lejla’s thinking about Islam as we shall see below. Significantly, all the writers mentioned could be considered “progressive”, with many being based in the United States, Canada or at least considering themselves to be in dialogue with European Islam. One notable exception was Yusuf Qaradawi, an influential and media-savvy Egyptian cleric based in Qatar, who was cited by Hafsa as influential on her thinking. Although Hafsa mentioned that she liked his work because he discusses ‘fiqh awlawiyat’, a body of fiqh that helps the practitioner determine which religious obligations take priority over others, he is also known for his rather controversial comments on the status of women and Jews, which he makes frequently on his popular Al-Jazeera television

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22 Although the terms ‘scholars’ and ‘academics’ are often used interchangeably, in this chapter, I will use ‘academics’ to refer to those individuals who were trained and work in universities, while ‘scholar’ will refer to public figures trained in classical sources but who may not embrace critical methods of analysis commonly utilized in the university. To be fair, the distinction is somewhat of an artificial one, as the participants themselves tended to group all these writers together. In other words, as far as ‘authority’ was configured for the women in the study, an academic background was on par with someone who was more classically trained in a traditional setting.

23 A few non-Muslim scholars of Islam also came up in the interviews: Goldziher, Schacht, and Karen Armstrong.
program, *Shariah and Life*. Given her reading choices, the fact that Hafsa seemed to hold the most conservative opinions among the participants should perhaps come as no surprise. Another interesting observation is that when asked about feminism, virtually all the Muslim women embraced the term, and two of them even cited *The Beauty Myth*, the work of Jewish writer Naomi Wolf, as instrumental to their identities as feminists.

Among the Jewish women, there was no equivalent to Amina Wadud – in other words, there was not one scholar whose name came up in virtually every interview. However, Orthodox feminist and activist Blu Greenberg and feminist scholar Judith Plaskow both surfaced a few times. Other scholars and academics whose work was mentioned included Tamar Ross, Rachel Adler, Susannah Hechel, Haviva Ner-David, and Elyse Goldstein. Contemporary Jewish male rabbis whose names came up included Steven Greenberg (U.S.-based openly gay Orthodox rabbi), Zalman Schachter-Shalomi (rabbi and founder of the Jewish Renewal Movement), and Joseph Telushkin (rabbi/ethicist). Several Jewish feminist fiction writers and journalists came up too, including Cynthia Ozick, Anne Roiphe, Rebecca Goldstein, Anita Diamant, Michele Landsberg, Lettie Cotton Pogrebin, Esther Broner, and Danya Ruttenberg.

While Jewish academics and rabbis may be thought of as operating in separate spheres from fictions writers and journalists, it is not insignificant that these names arose as examples of people who had a formative influence on the way that woman thought about their Judaism. To begin with, all these writers have the double role of serving as public intellectuals, and may be just as prominent as more conventional scholars in terms of the way that women define their Jewish praxis. Furthermore, in many cases the lines are blurrier than one might think: Cynthia Ozick’s essay “Towards Asking the Right Questions” is frequently cited as a watershed piece for re-thinking issues of Jewish feminist theology; Danya Ruttenberg edited an important anthology of Jewish feminist writing in 2001, but would herself become ordained as a rabbi in 2008; author Rebecca Goldstein was a main contributor of “commentary” to the *New American Passover Haggadah* published in 2011, which was edited by another prominent Jewish fiction writer.

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Jonathan Safran Foer.25 The slippery line between Jewish feminist scholars and fiction writers was underscored further in an article on “feminist biblical scholarship” by Adrienne B. Leveen, which examined the importance of Anita Diamant’s fictional re-working of the Biblical story of Dinah, alongside the work of Tikvah Frymer-Kensky and Ilana Pardes.26

The Spirit of the Law: Intersection between Academic Exegesis and Lay Interpretation

Given that the women of this study were so familiar with the works of intellectuals writing on classical texts, it is perhaps not surprising that there was some overlap between their own approaches to scriptures and the approaches of scholars, with an invocation of ‘the spirit of the law’ arising in both scholarly and practitioner discourses. Among the Muslim women in the study, Fazlur Rahman’s appeal to the ‘spirit’ of the law and his insistence on looking at Qur’anic material in its socio-historical context – two moves echoed most clearly and emphatically in the work of Amina Wadud – were regularly invoked in participants’ conversations about texts and praxis. As we shall see, a concomitant reliance on the Qur’an over and above other authoritative sources also figured prominently in the textual discourse of Muslim laywomen. Although Rahman’s ideas are also at play in the writings of Barlas, Mernissi, Shaikh and Ali as well, the fact that the work of Amina Wadud, as noted above, has become part of the contemporary Muslim woman’s ‘religious canon’ is perhaps a factor in the ubiquity of these ideas about the spirit of the law and the ability to derive it from the Qur’an alone.27

But interestingly enough, even among the Jewish women, a similar invocation of ‘spirit’ over ‘letter’ of the law was evident in their discussions of text and praxis. The notion of the halakha as flexible, as progressing and ‘maturing’ over time to reflect a change in communal conceptions

25 This text also featured “commentary” by children author Lemony-Snicket and featured a new English translation of the traditional Hebrew text, but yet another fiction author, Nathan Englander.
27 See references to Rahman’s work in Barlas, Believing Women, 22-23; Ali, Sexual Ethics, 52; Shaikh, Sa’diyya Shaikh, “Exegetical Violence: Nushuz in Qur’anic Gender Ideology” in Journal of Islamic Studies17 (1997), 51-54. Mernissi does not explicitly allude to Fazlur Rahman, but in The Veil and the Male Elite, she makes use of similar ideas, speaking to “the spirit of Muslim laws” (155) and the “egalitarian message of the Prophet” (ix, 126, 142,149).
of ethics, arises in the writings of both Tikva Frymer-Kensky and Judith Hauptman.\(^{28}\) As well, Tamar Ross speaks of the role of meta-halakhic principles,\(^{29}\) or the ideals ungirding the halakhic system, and Rachel Adler’s work hinges on the concept of a “metadiscourse provision” which allows for “reassessing questions of textual authority and interpretation... reevaluat[ing]...the definition of community...[and results in] more flexible boundaries permitting a more inclusive and expansive halakhic discourse,” instead of a rigid adherence to classical halakha.\(^{30}\) Indeed, all of these concepts are a variation on the theme of invoking the principles behind the texts (aka the ‘spirit’ of the law).\(^{31}\) And while the kinds of authors and texts being read by the Jewish women were much more varied, as we shall see, there were resonances with these academic reconfigurations of law in the comments of laywomen. Accordingly, it seems that a general favouring of the ‘spirit’ of texts over their more conventional interpretation and application is a tactic commonly employed by women who continue to be engaged with Jewish and Islamic texts and practices.

“\textit{It Never Occurred to Me}”: Gender and the Reading of Classical Religious Texts

So with the women’s knowledge of the work of contemporary scholars in mind, to say that they are, on the whole, religiously literate and extremely attuned to the major issues affecting contemporary Muslim and Jewish communities is not an understatement. Perhaps not astonishingly, many of the women were very studious and this was reflected in their self-concept as learners. Indeed, despite traditional prohibitions around Torah study in Judaism, and discouraging comments about women’s rationality in classical Hadith,\(^{32}\) when asked, none of the participants had ever questioned her right to study classical religious texts. In fact, most said


\(^{29}\) See Tamar Ross, \textit{Expanding the Palace}, 60-71.


\(^{31}\) It is interesting that Jewish writers and practitioners do not easily invoke the language of spirit over law in describing their views for reforming halakha. Perhaps this is because the notion of ‘spirit’ trumping law is so deeply connected to Christian theology, and in most cases, law and the principles behind the law, are not seen as so diametrically opposed in Jewish writings as they often are in early Christian thought. For an examination of spirit and law as part of a the same entity in Judaism, see George Horowitz, \textit{The Spirit of Jewish Law: A Brief Account of Biblical and Rabbinical Jurisprudence With a Special Note on Jewish Law and the State of Israel} (New York: Block Publishing Company, 1993).

\(^{32}\) See Introduction, 9.
something to the effect of, “It never occurred to me” or “I have never thought about it”. However, that is not to say that gender was irrelevant when it came to shaping either their reading practices or their positionality vis-a-vis the texts.

Although contemporary women’s access to text was a foregone conclusion for all the participants, this was set against an awareness that women’s involvement in the production of religious knowledge is not quite on par with that of men. This tension was best expressed by Zahra,

I have three sisters and a very, very, very strong mother. In terms of thinking is it strange to study the Qurʾan as a woman, it doesn’t even cross my mind. When I hear of other [people’s experiences], because I know that not everybody’s households are the same, I get really impatient, especially when it comes to Muslims.33

But while she had never questioned her own right to read or study the Qurʾan, and had participated in many women-only halaqat throughout her childhood where the discussion of the Qurʾan would have been prominent, she had never considered the possibility of women acting as Qurʾanic interpreters. That is, until the work of Amina Wadud “blew her mind” in 2006, when she read Qurʾan and Woman for the first time. As she explained, “This is pretty recent stuff. And that’s what I mean by [her] blowing my mind. Because how many years have I been a Muslim before that? And not even thought about female exegetes!?”34

Gender, Literacy and Textual Insecurity

Nonetheless, even when scriptural interpretation undertaken by women in general was thought of as commonplace, for specific women, it did not necessarily translate into confidence about their own textual literacy. In Talia’s case, although she talked fondly of studying classical Jewish texts in a variety of childhood settings, she described some of her more recent experiences of group text-study as failing to keep her attention, especially when it started to get “heady, dry, detailed.”35 She attributed this to her being more of a kinesthmetic learner, but also to having

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33 Interview with Zahra, 20 May 2009.
34 Interview with Zahra. 20 May 2009.
35 Interview with Talia. 26 July 2012.
insecurities “around intelligence and being a woman and not knowing enough.”\textsuperscript{36} In the co-ed study context of Scriptural Reasoning,\textsuperscript{37} this insecurity came up, not so much because of the presence of knowledgeable men, but rather because “the Jewish women in the room are very highly knowledgeable so what could I possibly have to say?”\textsuperscript{38} When the topic under discussion was prayer, something she has much more experience with as a professional hazzanit, or cantor, she felt she was on firmer ground, “I had a lot to contribute even though I was worried about not having anything to contribute.”\textsuperscript{39}

At the other end of the spectrum, but perhaps arising out of a similar internalized misogyny\textsuperscript{40} and insecurity, Natalie, regarded her passion for text-study, philosophy and debate as marking her as more ‘masculine’. Natalie was serious about text-study; she had dedicated a year to reading the weekly Torah portion on her own and each night read a few pages from the Torah commentaries of the Hafetz Hayyim (19\textsuperscript{th} – 20\textsuperscript{th} century rabbi/ethicist) and Joseph Teluskin (contemporary rabbi/ethicist). Her interview with me was peppered with remarks like “I’ve grown up wanting to be a man”, “I like gender-bending” and “I don’t relate to most women,” and she expressed feeling quite different from most of the women in her family who are “more into clothes and

\textsuperscript{36} Interview with Talia. 26 July 2012.

\textsuperscript{37} As noted above, Scriptural Reasoning or “SR” involves small groups of Jewish, Muslim and Christian scholars meeting to read one another’s sacred scriptures together. Although it began as an academic enterprise, it has now also gained momentum as a civic practice as well with groups of lay-practitioners meeting in London and Cambridge, England as well as several urban centres across North America. When I began convening WBMA, I was totally unaware of the existence of SR and to the best of my knowledge, no SR groups were yet meeting in Toronto. Since then, a few local SR groups have formed and several of the participants in WBMA have after-the-fact also sought out these groups. While there are certainly resonances between the goals of SR and the text-study groups I was co-ordinating, as noted by my respondents, the explicit focus on gender and law and the rarity of the Jewish-Muslim dialogue, as opposed to the Jewish-Muslim-Christian triadogue, resulted in very different kinds of conversations in WBMA. See interviews with Zahra, Mona, Rebecca, Talia, and Yasmin.

\textsuperscript{38} Interview with Talia. 26 July 2012.

\textsuperscript{39} Interview with Talia. 26 July 2012.

\textsuperscript{40} I am using this overdetermined term to describe both a lack of confidence that women have as a result of negative messaging about their abilities which permeates all patriarchal cultures, as well a deep-rooted suspicion of other women and a subsequent distancing of themselves from traits traditionally marked as ‘feminine.’ For more on internalized misogyny, see Internalized Misogyny: Conceptions and Implications, eds. Dina Daleo and Michele Riggs (Los Angeles: California School of Professional Psychology, 1996). On global educational practices reinforcing gender stereotypes and reproducing insecurities in girls as learners see Caroline Hodges Persell, Carrie James, Trivina Kang and Karrie Snyder, “Gender and Education in Global Perspective” in Handbook of the Sociology of Gender ed. Janet Saltzman Chafetz. (New York: Springer Science-Business Media, 2006), 408. On internalized misogyny and its affects in the workplace see Carol Tosone, “Sotto Voce: Internalized Misogyny and the Politics of Gender in Corporate America” in Psychoanalytic Social Work 16, 1 (2009): 1-11.
stuff than into intellectual stuff that I am obsessed with.”  While the mostly progressive Jewish women were dominant and intimidating in the mixed-gender text-study sessions that Talia had attended, Natalie found just the opposite was the case in co-ed classes sponsored by the Orthodox institutions she had frequented, “Often it is the men that I have a lengthy conversation with and the women are just there to watch or something. I find women aren’t as often heavyweights intellectually...When I do a drop-in class for everyone, the men like to debate the rabbis and the females like to doodle.” However, she noticed a marked difference in a woman-only context of When Beruriah Met ‘A’isha (WBMA), “When it’s just women, like in seminary women are willing to be heavyweights and study and care...So stuff like this group [WBMA]...I was like, come on women, let’s get together and think about things!” One of the more vocal Muslim women in the WBMA sessions she attended also left a deep impression, perhaps challenging some of her stereotypes about both women and Muslims. Regarding the woman’s outspoken nature, she reflected, “I like that. I love seeing women...willing to defend their own faith...I love seeing women speaking and asking and questioning.”

**Female ‘Bookishness’ As Exceptional**

These gendered associations with textual study and book learning were subtly at work in Lejla’s experiences as well. A more in-depth look at her biography is instructive here. While she certainly did not regard herself as more masculine because of her interest in texts, her bookishness certainly marked her as different from most of the girls around her growing up. And undoubtedly, Lejla, a self-described ‘daddy’s girl’, associated her love of learning with her hard-working father. A naturally charismatic and affable restaurateur, her dad’s focus on education was uncharacteristically “fascist”, according to Lejla, “he would say you have to read and study, he would quiz me. On the capitals, the times tables. He had no patience for ignorance.” She identified with him more easily than her mother who was not university educated and wanted to go to “restaurants a lot and go out all the time.”

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41 Interview with Natalie. 22 January 2010.

42 Interview with Natalie. 22 January 2010.

43 Interview with Natalie. 22 January 2010.

44 Interview with Lejla. 15 Aug 2011.
preferences about how to spend her leisure time. Like her father who preferred to come home and read a book at the end of his long day, throughout her childhood, Lejla would choose reading the Qur’an and other books on religion over going outside to play. While it was a female cousin who first piqued her interest in the Qur’an with the promise that, “if you read the Qur’an once when you die you will go straight to heaven”, ultimately it was her father who would help foster her thirst for knowledge, after Lejla, aged eleven, walked in on him as he was completing his prayers. Describing her father as a “liberal Muslim...your typical European Muslim” who “follows Islam by the spirit” and prays “if he has the time”, the *sujūd*, or prostrations, associated with Muslim prayers were apparently not a frequent sight in her early childhood. After teasing him that his odd movements looked more like calisthenics than prayer, he encouraged her to embark on her own spiritual journey, responding, “Okay, if you’re so smart, and that’s weird, then why don’t you go study and find yourself a religion that you’re happy with.”45 She took this research quite seriously, and read everything she could get her hands on about Judaism and Christianity. Although the other two Abrahamic traditions did resonate with her – Judaism more so than Christianity – she eventually decided that Islam was the right path for her. But this drive to seek out religious knowledge precipitated by her father would remain with her for life.46

While her father was thrilled when Lejla expressed interest in attending an Islamic day school, (“that’s great, you can’t talk to boys, they can’t talk to you – I’ll sign you up!”), her mother did not share her enthusiasm for the school, fearing that is would be dominated by an “Arab nationalist oriented and very male-oriented” agenda.47 Although she agreed to have Lejla attend the school, she insisted that she remove her school-mandated hijab as soon as she came home. And there were other instances as well where a male father-figure was more supportive of her passion and interest in religion and religious texts. Noticing that Lejla preferred sitting in the library over her lunch hour rather than socializing with her classmates, a concerned female

45 Interview with Lejla. 15 Aug 2011.

46 It is perhaps worth noting that recent studies have found that a father’s involvement in a child’s education precisely at the age of 11 can have greater influence on a child’s educational success than many other indicators, including family background or a child’s personality. See D. Hango, “Parental investment in childhood and educational qualifications: Can greater parental involvement mediate the effects of socioeconomic disadvantage?” in Social Science Research 36, 4 (2007): 1371-1390.

47 Interview with Lejla. 15 Aug 2011.
teacher in her high school accused her of being an extremist. However, Lejla, was quick to point out that her male principal did not share the teacher’s concerns, but rather was supportive of and impressed by her studiousness and zeal, asking her on numerous occasions to represent the school by giving speeches at public events. Reflecting on her serious nature, she explains,

I had no interest to go outside. I had no interest to go to parties. I had an interest to learn, for some reason, I don’t know why. I would just lock myself in my room and read. I was doing what I loved. It was fun... I just kept saying this is so interesting to me, there is so much to learn, I can play later.  

She recognized that her studious nature and dedication to learning was exceptional among her female classmates in high school, most of whom had been forced to attend an Islamic school. “I remember talking to so many of the girls, because I went there, not just as a student, but as someone seeking God, and all my peers, they were all there because their parents forced them and I was the only one who was there as a volunteer.”

But while her female peers in high school did not share her interests, her expectation seemed to be that university would be different. At the time of our interview, she was launching a book club for college and university girls to “discuss a nonfiction publication [and] network with girls of similar backgrounds in academia.” And when asked about how important it was that the study group be comprised of women only, she agreed that it created more intimacy and added, “If you look at the statistics on education now, you find that women read more than men, literacy rates among men are declining and university enrolled for males is down. I don’t know why. Maybe [men] find it tedious to read.” So unlike Natalie, she does not share the bias that women are less likely to take learning seriously, but rather she expects that other women will share her passion, her dedication and self-respect as a student. In that vein, she explained being deeply offended when a Muslim female professor teaching an introductory course on Islam made self-deprecating remarks about her own intelligence,

[The professor mentioned what a poor student she was herself] and it was just really unprofessional being in her class and listening to her make comments like that. It was hard to take her seriously. She would make comments like ‘I’m a professor and I

48 Interview with Lejla. 15 Aug. 2011.
49 Interview with Lejla. 15 Aug 2011.
50 Interview with Lejla. 15 August 2011.
don’t even know how to spell’ and I didn’t think that was funny. I am a really serious
student. I really want to learn... She’s really interesting. She has interesting things to
teach. But don’t ever say things like that about yourself! Other students were
laughing, but I did not find it funny. When I suggested that perhaps the professor was using these statements strategically to make her
students feel less intimidated, Lejla responded, “It made me feel like, ‘Oh my God, wait – I
could fail high school and still become a professor and all these years I’ve been working so
hard?’ I’m such an ignoramus! That’s how it made me feel.” While Natalie resented the
women who refused to step up to the intellectual plate in a co-ed Torah class, Lejla similarly
found a Muslim female professor’s attempt to ‘dumb herself down’ while teaching about Islam
an insult to her own intelligence.

Barriers to Textual Confidence
To be fair, these issues around self-confidence arise fairly frequently in studies of women,
literacy and education more generally. However, they are perhaps even more pronounced in
discussions of texts which marginalized women and were traditionally monopolized by men.
We already noted in the previous chapters the way women were historically left out of the
serious study of traditional texts and that even today, they struggle to be taken seriously as
scholars of more legally-oriented texts both within their communities and in the academy.
Wadud and Ali have each commented on the dearth of female academics engaged in Hadith and
fiqh studies, and Mernissi was derided by a Muslim authority figure as a “female legal scholar

51 Interview with Lejla. 15 August 2011.
52 Interview with Lejla. 15 August 2011.
53 Michael Kimel has noted that “The classroom setting reproduces gender inequality. From elementary school
through higher education, female students receive less active instruction, both in the quantity and in the quality of
teacher time and attention” See The Gendered Society (Oxford: Oxford University Press, 2007), 179. Kimel further
connects girls’ lower rates of success in math in sciences to a lack of self-confidence that arises in girls as they enter
adolescence, an experience Carol Gilligan has termed a “losing of their voice”. See Kimel, The Gendered Society, 161; On global educational practices reinforcing gender stereotypes and reproducing insecurities in girls as learners
see Caroline Hodges Persell, Carrie James, Trivina Kang and Karrie Snyder, “Gender and Education in Global
Perspective” in Handbook of the Sociology of Gender ed. Janet Saltzman Chafetz (New York: Springer Science-
Business Media, 2006), 408; On mainstream concepts of literacy disadvantaging marginalized women of colour, see
54 See Wadud, Inside the Gender Jihad, 7; Kecia Ali, Sexual Ethics and Islam, xx, 154. Ali’s argument is that many
feminist scholars intentionally choose not to engage with Islamic jurisprudence, viewing it as irrelevant to their
lives, but part of this abandonment of law may have to do with a lack of access and adequate training as well.
without fiqh” when she attempted a serious investigation of a hadith with serious legal implications for women.\textsuperscript{55} And while Hauptman has suggested that one requires a traditional (read: male) yeshiva background to gain the skills for properly dissecting rabbinic texts, both Peskowitz and Labowitz have insisted that, despite academic resistance, it is necessary to challenge the rabbinic cannon’s “history of privileged reading strategies both religious (including the exclusion of women as readers) and scholarly...so that we do not simply read with the text’s categories of male and female...but instead recognize these works as the very sites in which the processes of (re)producing, circulating and negotiating the categories of gender take place.”\textsuperscript{56}

Indeed, given these biases against women and the real obstacles that still exist in terms of studying some types of traditional texts, it is amazing that any Jewish or Muslim woman – whether laypractitioner or scholar – is able to feel confident about picking up and reading these seminal sources on her own.

**Scriptures as an Entry Point to Lived Judaism and Islam**

Nevertheless, virtually all of the women suggested that knowledge of one’s texts was critical to their experience as Jews and Muslims. For most, the opportunity to study texts was a primary reason for joining and participating in the group, although, as we shall explore later, it was not the only reason.

Yasmin commented on the intimate connection between the text and experience of the divine, “I feel scripture is essential to salvation because it gives you the path to it. So if we are to be saved or to find God or to find our own faith, how can we do it without having a direct relationship with the scripture?” For Rebecca, on the other hand, who “never really believed in Torah le-Moshe me-Sinai [literally, ‘Torah as given to Moses at Mount Sinai’]” and was fairly certain that “the texts were written by men”, traditional sources nonetheless were the centrepiece of her Judaism,

I like text-study. In some ways, it is my form of prayer. And it is the way that I engage with my tradition in a way that makes sense for me... there’s something about text-study that lets me just dive in. Even if I disagree with everything that I am learning, that lets me dive in and learn and also be part of it, learn and have my own

\textsuperscript{55} See Rhouni, *Secular and Islamic Feminist Critiques*, 222.

\textsuperscript{56} Gail Labovitz, *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature*, 12.
response, which I love...I think we really are the People of the Book or of 
Books...we really are text-rooted. We want to know what it says and what it was 
supposed to mean. We are not just a people of practice and not just a people of belief, 
we are a people of text and intellectual grappling with text.\footnote{Interview with Rebecca. 14 September 2011.}

And for Nuria, it was, in fact, this perceived shared emphasis on scriptures that had led to her 
interest in the \textit{When Beruriah Met 'A'isha} group,

I think I have always been interested in Jews in particular probably because there are 
so many similarities in terms of practice and the obsession with scripture...[I joined 
the group because] I was interested in this new slant on things. This new scriptural 
study. Because scripture is important. It does inform how we behave, whether we 
choose to move away from scripture or not, it’s sort of the basis. We all grow up with 
scripture, it’s the first exposure we have to our faith. It was important for me to 
understand my scriptures, but also to be exposed to the Jewish scriptures as well.\footnote{Interview with Nuria. 27 Aug 2011.}

The complex connection between scripture and praxis hinted at by Nuria was echoed by Sophie, 
who regarded text-study as a critical, essential and defining activity for more traditional Jews, 
but who likewise was not convinced that it was as pertinent and indispensible to her own ability 
to live a meaningful Jewish life as committed Reform Jew. Her comments serve as an 
interesting counterpoint to those articulated above,

I think if you are going to engage with Judaism in a meaningful way, it is important 
to go to the source and find out why. I have a cousin who became religious in her late 
teens... She is very conscious of... most religious decisions that she makes. She will 
actually go to the text herself and assess, “well how do I feel about this?” She and her 
husband will. And I have a lot of respect for that. But I think if you are not someone 
who is going to live your life in that way, then I think it is less important. I think if 
you are choosing to live a halakhic path then it is important to read it. Otherwise I 
think it is good and makes me feel more connected to my tradition and it is so cool 
when you find the origins of things. But can you be a good Jew and not read text? 
I think you can.\footnote{Interview with Sophie. 12 June 2012.}

Sophie then turned to me and whispered, “Is that the wrong answer?” We both chuckled 
knowingly, acutely aware of the role that text-study plays in my research. I reassured her that 
there were no wrong answers, but her response is revealing. For her, the text-study group was 
As a hobby I go to a book club and I love it, so it follows that I would enjoy the study of text.” But she also acknowledges having taken several text-based classes at Kolel [a continuing education and culture centre for Jewish adults] and suggests, “I think I felt a pull to do it. I think – you know, you get busy, but I’ve always wanted to go to Pardes [a post-denominational, co-educational yeshiva in Jerusalem]. And I will one day for a month or something. I think I lost my way with it a little but for a while it was something that was important for me to do.” So despite the assertion that classical Jewish texts have less of a direct bearing on her personal practice as a Jew in the present, they are still an ongoing source of intellectual curiosity and do indeed make her feel “more connected” to her tradition. Similarly, when I asked her if the group would have been as interesting for her if it had been a ‘regular’ book club, she acknowledged the uniqueness of the group’s, “religion aspect and the underlying social action and feeling that I was contributing to a shared understanding in what could be a troubled relationship really, I liked that...” She also recognized the merits of text-based discussions that involved only women, “There’s a shared experience when we talk about modesty, your period, and having children, marriage, a shared commonality, the role in the house and your mom and sisters. I think that might contribute to the comfort, the intimacy.” While a discussion group that looked at these topics without the presence of traditional texts might have created the same sort of intimacy, as Rebecca suggested, the presence of scripture made it “more accessible...less scary,” as participants had something in which to anchor their beliefs and opinions.

As well, many of the women made it clear that text-study was important, not only because scriptures were the foundation of both Judaism and Islam, but precisely because of women’s historical exclusion from traditional exegesis. Rebecca noted that women studying the texts were “a contradiction to sexism.” Ariel similarly remarked that the discrepancy between the way that men and women studied the texts put women at a disadvantage, “I think women of all religions should be able to access the texts. My mom would tell me when I was younger that it

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60 Interview with Sophie. 12 June 2012.
61 The ‘social action’ aspect of the group will be discussed further below.
62 Interview with Rebecca. 14 Sept 2011.
was sad women didn’t get to study like men do because they’re shutting out 50% of the ideas, more than 50% probably.”

**Jewish Women and Legal Texts: Making the Argument their Own**

Indeed, the type of texts being studied and the manner in which they were taught also had an impact on the way women related to them. Perhaps not surprisingly, hands-on experiences with religious legal texts were more limited than in-depth exploration of Tanakh and Qur’an. Among the Jewish participants, Tamara and Talia had done little to no Talmud study, and it was not a significant topic of discussion in my interviews with Natalie and Sophie. For those who had more exposure to Talmud, more traditional modes of Talmud study tended to seem somewhat alienating. Rachel’s description of participating in a high-level Talmud class at the co-ed yeshiva Pardes encapsulates the “disadvantage” that Tal Ilan suggests befalls women and other “neophytes...who [are not] already versed in [the Talmud’s] formulae and minutiae.”

I took Talmud. I should have been in the lower-level class, but I wanted a particular teacher. We were totally doing hard-core Talmud. Crazy rabbinical discussions about seemingly nothing. It was actually about marriage. We looked at *kinyan*. It was like a crazy detailed discussion and I was like – what? [facial expressions and hand gestures indicate that she was lost and confused]. I managed, I was learning a lot. Most people in the class had more Talmud experience than me. I was for sure challenged. I took it because of the teacher, but let’s just say that if I knew I was going to be evaluated, I wouldn’t have taken it!

While Rachel felt she was getting lost in the obscure details “about seemingly nothing,” Rebecca, who had also spent time studying Talmud at Pardes, found she was most engaged when Talmud study followed a less conventional method of inquiry.

Yes, I did Talmud at CHAT [Community Hebrew Academy of Toronto; a high school], but I wouldn’t really say that I engaged with the text there. I would say the first time I engaged with text was when I was staff at Nesiya [an experiential Jewish leadership program which brings together North American and Israeli Jews]. ...I think in high school...and even at Pardes, a lot of it was let’s read what’s here, let’s understand what it means by looking at what other people think it means and then we will move on. Whereas with Nesiya the first question was – what questions do you...
have of the text – which characters do you identify with and why? What does this line mean, what else could it mean, what else could it mean? A different kind of engagement. What else could it mean – what are the implications of that? And because there is such a plurality of who is in the room at Nesiyah, from *hiloni* [secular] Israelis to *frummy Yershalmis* [traditionally observant Jerusalemites] plus diversity of North American Jewry, you just have eyes from very different perspectives reading the same text and it’s interesting, exciting – it’s like – you read it how? Wow. And that also sparks things about practice. So if you read it like *this*, why do you do *this*?

For Rebecca, the allowance to read the text from multiple and conflicting contemporary perspectives – and not just from the perspectives of traditional medieval commentators – gave the experience of Talmud study a dynamism that it had lacked in other settings. And the fact that the questions arising from the text became directly related to the way different people understood and practised the tradition brought the text alive. Or perhaps more correctly, reading the text brought the people to life. The different understandings of a text allowed people of diverse backgrounds to politely be nosy about one another and find out about the day-to-day beliefs and practices of strangers, information which might otherwise take hours of intimate conversation to discover. Perhaps, as Samuel Heilman discovered, the texts opened up a space for people to get to know one another and develop a fellowship. As he explains, “the relationship is a synergistic one. Without the Talmud as an object of study, no *khavruse* [relationship/fellowship] would come into being; and without the *khavruse*, the Talmud often gathers dust lying on a shelf.”

Ariel, who had grown up in a traditional South African Jewish home, attended CHAT and regularly went to services in a Chabad-affiliated Orthodox synagogue, had a more ambiguous relationship with the Talmud. She stated point blank, “I don’t like the Talmud,” but then suggested that it was a greater source of intellectual interest and curiosity than later law codes such as Maimonides’ Mishneh Torah and the Shulhan Arukh. She pinpointed the arguments in

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66 Interview with Rebecca, 14 September 2011.
68 The Chabad movement is an Ultra-Orthodox Hasidic group with global satellites focused on bringing non-affiliated Jews back to traditional Jewish practice.
the Talmud as making it more a more appealing object of study than these other, more pared down sources,

The Talmud is amazing because arguments and opinions come out of it. And you can take different opinions and it’s still [part of] the Talmud, and it’s following traditions. Of course the Mishneh Torah boils it down even more and the Shulhan Arukh even more. It’s very interesting. [Orthodox rabbis are] so afraid that people will simplify the tradition by liberalizing it, but in a way, the religion has been simplified already by codifying it in that way, by taking out the argument.\textsuperscript{69}

Ariel noted that Orthodox rabbis are fearful of the tradition being overly simplified by those hoping to modernize it, but she points out that as soon as the medieval law codes became popular, the tradition was already simplified, since what continued to keep it complex and dynamic was the dialectic, the argument-based material in the Talmud, which is absent from the more bottom-line oriented, ‘this-is-how-you-must-behave’ codes.

Abigail similarly found that Talmudic arguments, when presented in an unconventional way, did speak to her. Although she hated her supplementary Hebrew school classes at a Reconstructionist synagogue since they were “just endlessly wishywashy,” she enjoyed it when Talmudic passages were presented as a debate, “We’d argue about them. Like this is what this rabbi says, you people are on his team...We liked to argue a lot. It makes it more fun.”\textsuperscript{70}

None of these women were poring over the Talmudic text for eight hours a day in darkly lit rooms, following traditional modes of Talmud study, such as \textit{pilpul}\textsuperscript{71} or ‘the Brisker method’\textsuperscript{72}.

\textsuperscript{69} Interview with Ariel. 16 Aug 2011.
\textsuperscript{70} Interview with Abigail, 17 January 2010.
\textsuperscript{71} A term meaning ‘incisive argumentation’, \textit{pilpul} became widely practised first in Germany, and eventually in the Polish rabbinic academies. It involved focusing on a small literary unit of the Talmudic text (known as a \textit{sugya}) in isolation, analyzing it in detail, and then finding a resolution to all the problems and contradictions arising from the text. This type of study was usually undertaken in small groups or study pairs known as \textit{havruta}, and as part of their training, students would often be asked to tackle imaginary problems or halakhic riddles loosely connected to the text. See Jay Harris, “Talmud Study” in \textit{The YIVO Encyclopedia of Jews in Eastern Europe} (accessed 16 January 2012).

\textsuperscript{72} Referred to as ‘the Brisker method’ after the Belarus town in which it emerged, this approach took shape under the leadership of Rabbi Chaim Soloveitchik (1853-1918). Rather than focusing on each stage of the argument like the pilpulists, the followers of the Brisker method were most interested in the Talmud’s halakhic conclusions as understood by the \textit{rishonim}, rabbinic authorities who lived prior to the publication of the Shulhan Arukh. Hence, by appealing to conceptual distinctions between the objects of analysis (i.e., subject-object, person-thing, cause-effect, etc.), any apparent contradictions between, for instance, Maimonides and the Talmudic text, would be resolved by illustrating that the two texts were not in fact comparable or analogous as originally suspected. Although the Brisker
But they were not doing contemporary historical, literary or source critical analyses of the text either, as we saw with Miriam Peskowitz, Judith Hauptman or Rachel Adler. The approaches to study were something in-between the academy and the *beit midrash* (the house of study). Indeed, the classes at Pardes, which most closely resembled the study sessions in a traditional yeshiva, were marked as “challenging” by Rachel and less engaging by Rebecca, since they privileged the textual understandings of traditional commentators over the insights of the students in the room. Again, Heilman’s work is instructive here, since he finds that traditional *lernen*’s life

consists of an unending reiteration of the ideas generated by others...Maimonides...is even more precise on this point, arguing that even if one has a new idea or better interpretation of Torah, ‘he does not say it before someone greater than him in wisdom’, that is, his Rav. The implication is unmistakeable: calm repetition is preferable in *lernen* to critical innovation.\(^{73}\)

For the women learners in the group, this repetitive mode of study was not what they related to. This was not the ‘love of texts’ that so many of them described. Rather, they were most engaged when they were able to follow the argument, make it their own, and suggest new ways of looking at the text. As opposed to the disciplined, cultivated self made possible through repetition of the same act over and over again, as can be noted among the Muslim women learners in the work of anthropologist Saba Mahmood, these women preferred to feel as if they were encountering and conquering the text for the first time, without the burden of the interpretive legacy, much as we saw Frymer-Kensky, Wadud and Barlas attempt to do in Chapter 2.\(^{74}\) Indeed, rather than submitting to, and being disciplined by the text, these women learners preferred to have the text submit to them. By reading the texts through the lens of their specific “experiential realities”,\(^{75}\) they seem to be making use of Shaikh’s embodied *tafsīr* and Plaskow’s feminist midrash. As we shall see, an even greater reliance on embodied *tafsīr* and feminist

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\(^{73}\) Heilman, *People of the Book*, 242.

\(^{74}\) Mahmood’s work, as noted earlier, explores women’s involvement in the Egyptian piety movement. See *The Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2004). Mahmood’s work will be addressed again in my Conclusion.

\(^{75}\) Sa’diyya Shaikh, “*Tafsīr of Praxis,*”74.
midrash will be noted among those participants in the group who are the most ‘textually confident’.

**Muslim Women and Legal Texts: Limited Access**

For the Muslim women in the group, direct study of actual fiqh texts was virtually unheard of. Consistent with Kecia Ali’s remarks about the Qur’an and the Sunna being the ‘go-to texts’ of Muslim communities in a post-traditional context, the focus of the Islamic day schools attended by both Lejla and Nuria was on “learning the Qur’an, learning Arabic, learning about the Prophets” as well as the stories of the Companions and memorization of Hadith. The hadith chosen were mostly from the *Saḥīḥ* (the ‘SaḥīḥSaḥīḥ’ works of Bukhārī and Muslim), but reports from the collection of Tirmidhi, which is one of six works generally included in the canon of authoritative Sunni Hadith, were also not uncommon. As Nuria explained,

> We had a teacher who would every week get us to memorize a hadith and he would test us on it.... They were from Bukhārī and Muslim. He might have picked from the Tirmidhi collection, one or two of those, but primarily from Bukhārī and Muslim. Most of them were Abu Hurayra hadith [Nuria laughs at this point]. It’s not surprising because he had so many hadith...I think he picked reasonable hadith. I don’t remember that they were controversial.”

Nuria laughed, recalling that the most frequently cited Companion in her elementary school Hadith classes was Abu Hurayra, notorious for several unflattering comments about women as we noted in the previous chapter. While she was more aware of this fact as an adult, she did not remember feeling alienated by any of these texts as a child, and that the teacher likely picked ‘reasonable hadith’. But the pedagogical approach she described seemed to privilege the memorization of Prophetic reports, more as aphorisms than as legal precepts, although presumably, one was expected to live what they were learning and reading.

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76 The marginalization of fiqh texts in North American Islamic pedagogy is perhaps not surprising, given that even Qur’anic tafsīr was not prioritized. Lejla noted the absence of tafsīr in her high school Qur’an classes, “No. It was expected that you knew what God was saying. There was no debate or interpretation... we were taught that there was only one meaning.” Zahra had a similar experience with tafsīr at her Saturday religious school classes, “You never really studied tafsīr. You would read a tafsīr when you were reading the Qur’an. But the idea of tafsīr as a genre was never or spoken of. It was led by people in the community who were engineers and computer programmers.” This is not dissimilar to the treatment of commentary texts in the study of the Torah in traditional Jewish environments. As Tikva Frymer-Kensky explains, “Rashi’s eyes became the lens by which Jews read the Bible. His commentary became so authoritative that Jews often did not distinguish between what the Bible says and Rashi’s interpretation.” See *Studies in Bible and Feminist Criticism*, 368.
Mona, on the other hand, suggested that in her Egyptian primary and secondary schools she would have studied Qur’an, hadith, *sirah* (biographies of the Prophet) and “maybe a little bit of *fiqh,*” which involved not so much reading texts directly, but more learning about rules and guidelines governing prayer, diet and ablutions, as well as the basics of *uṣūl al-fiqh.* She would read *fiqh* manuals, such as those by Sayyid Sabiq or al-Jaziri on her own at a much later stage. Among the Muslim women participants in this study, she is perhaps the only one with the background and training to pick up the texts and engage with them on her own. Indeed, Hafsa, who also grew up in a Muslim-majority country, expressly mentioned turning down an option to study *fiqh* more in-depth as an elective in high school, while Yasmin who attended a secular Kenyan public school and a Jain high school before immigrating to Toronto explained, “I never got to study shari‘a in any way because there was no real handbook that I could take out and check. There are the rulings, but....” she trailed off, suggesting that such ‘rule books’ were incoherent without also having the requisite background to understand the rulings and the logic behind them in their proper context. So for most women, it was a question of access. The few women other than Mona who had studied *fiqh* in some form actually came across it at secular universities. Zahra indicated having taken one class on ‘shari‘a’ while attending the American University of Cairo, Nuria took a class on Islamic law through the law school at the University of Toronto, and Petra too explained that she took a course on Islamic law as part of her own legal studies in Germany. These more academically-oriented courses would have emphasized the history and formation of the four Sunni and two Shia *madhab*, or schools of law, perhaps elementary aspects of the *uṣūl al-fiqh*, over any substantive issues of law and daily practice, but they would have provided women with a rare opportunity to read a selection from primary Islamic legal sources, most likely in translation.77

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77 While secular universities were important points of entry for women to gain basic information about the Islamic legal tradition, it is important to note that there are several women’s seminaries where Muslim women can study *fiqh* texts in a similar fashion to the way that Jewish women reported engaging with *Talmud*. While the proposal to create a ‘Muftiyah’ program sponsored by WISE (Women’s Islamic Initiative in Spirituality and Equality), and run through the New York-based ASMA society, is indeed innovative since it aims to train Muslim women as jurists and religious scholars, there are already hundreds of women’s religious seminaries operating in Iran, the largest and most prestigious being Jamiat al-Zahra, established in 1986. Nonetheless, while women are encouraged to take courses in Islamic jurisprudence as part of these programs, as scholar Marjam Kunkler has illustrated, government intervention to simplify the curricula has resulted in women being trained “primarily in *tabligh* (Islamic propagation), and less in understanding and developing critical scholarship in theology and jurisprudence.” See Marjam Kunkler and Roja Fazaeli, “The Life of Two *Mujtahidahs*: Female Religious Authority in Twentieth-Century Iran,” in *Women, Leadership and Mosques: Changes in Contemporary Islamic Authority*, edited by
Textual Literacy as ‘Participation’

While the history and theoretical underpinnings of Islamic law which introductory academic courses tend to focus on is likely welcome information for Muslim women, the ‘fine-print’ pertaining to daily praxis is not inconsequential to them either; to be sure, the reading and studying of classical religious texts is not just an intellectual exercise for laywomen. The Jewish women may have complained about the impenetrability of halakhic language and traditional modes of Talmud study, while the Muslim women may have described a distinct lack of access to more legally-oriented texts; nonetheless, many of the women in the study regularly turned to these texts both as a means of determining their praxis and in order to challenge perceived authority and authority figures.

Tamar El-Or’s conception of women’s religious literacy as participation is instructive here. In her survey of critical literacy studies in anthropology, she found that more often than not, these theories reproduce inequalities and do not take into account the lived experiences, oral histories and other non-traditional skills or forms of knowledge of the group being studied. By contrast, she found that the theory of “legitimate peripheral participation” (LPP), which looked at apprenticeship as a form of literacy and characterized “a community of learners [as] a community of practitioners” was a good lens through which to view the Religious Zionist women in her study for whom engagement with classical Jewish texts was linked to their desire to broaden their participation in the community. As El-Or explains, literacy as participation also has implications on communal borders and conceptions of power and authority,

Learning as participation is learning in motion – between old and new, between margins and centre, between generations. This allows the broadening of areas of

Masooda Bano, and Hilary Kalmbach. (Leiden: Brill, 2012), 129; also Marjam Kunkler, “What Iran wants from female religious authority: piety - yes, expertise in fiqh – no” in 50.50 Newsletter (12 Feb. 2012) < http://www.opendemocracy.net/5050/mirjam-k%C3%BCnkler/what-iran-wants-from-female-religious-authority-piety-yes-expertise-in-fiqh-no> (accessed 20 Aug, 2012). So while the hopes of the founders of these schools was that they would provide more women with the theological and juristic tools to better participate in national discussions of public policy and shape the direction of Iranian women’s legal rights, the programs have been co-opted to instill piety in women and girls so they can act as ambassadors of the faith rather than experts in fiqh. Notably, this is perhaps akin to the role that several Jewish women’s seminaries had in the 1970’s and 1980’s, where as noted earlier, even the founders acknowledged that the women were not receiving the same rigorous level of study as the men. See Vanessa Ochs, Words on Fire: One Woman’s Journey Into the Sacred, (New York: Harcourt Brace Jovanovich Publishers), 48-49.

El-Or, Next Year I Will Know More, 278.
practice within the community, and the chances for contact and dialogue increase. The areas of meaning and the power of the community also broaden. According to the text, while the women in my text-study groups also reveal an intimate connection between textual literacy and communal participation or praxis, I would suggest that textual confidence is a major factor in how women perceive authority and how willing they are to challenge it.

Although for some of the women, as noted earlier, there was a sense of dislocation in relation to the texts because of their gender, for those who had been reared in the texts from a young age and continued to grapple with them more intensely as adults, there was a remarkable degree of self-reliance and poise that characterized their reading of scriptures, even despite the aforementioned issues around access.

Accordingly, I do want to make an important distinction here between knowledge of one's texts and confidence about that knowledge. While they often do map on to one another, in this case, I am most interested in a perceived expertise on the part of the participant. As will become evident in the examples below, this confidence, which often stems from more extensive involvement with classical religious literature, is what empowers the women to make decisions both about praxis and their relationship with authority.

**Textual Confidence and Embodied Tafsīr: Muslim Women Confront Texts, Authority and Praxis**

As we shall see, among the Muslim laywomen in this study, Lejla, Mona and Nuria have the highest degree of textual confidence. Much of this confidence had to do with extensive exposure and access to traditional texts as well as support from family members to pursue these interests and lines of inquiry in both traditional and secular academic settings.

**Lejla: “There’s Not One Hadith I Haven’t Read”**

Lejla’s serious engagement with classical Islamic texts in her youth has given her a confidence, which as we shall see, rivalled that of Mona’s, an academic and specialist on the Qur’an. I do

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79 El-Or, *Next Year I Will Know More*, 280.
not mean to suggest that Lejla’s knowledge of the sources was as in-depth, nuanced or as sophisticated as Mona’s, but her self-assurance and the ease and fluency with which she referred to Qur’anic passages or Hadith was not dissimilar to that of a woman whose professional life was dedicated to these texts. Her scriptural competence and confidence was unusual and noteworthy even among the women in the study. It came out in little ways, with statements like, “when I was reading the Qur’an – I’ve read that book over hundreds of times... every time you read it, there’s something else” or “There’s not one hadith that I haven’t read, Shari.... Everything. Bukhārī, Il-Tirmidhi, Muslim – I have read every volume and most of them I have memorized. There’s not one hadith that I come across that is new.”

And it was this in-depth knowledge of the texts that empowered her to make decisions about her personal practice. Although she never felt that hijab was really necessary, it was her knowledge of the Qur’an that persuaded her that it was not a requirement,

   And every time I read [the Qur’an] over, I never saw a commandment that you have to cover your hair. Not once. I never saw that. I just saw cover your bosom and cover your private parts. I didn’t see your hair.

This is a prime example of empowered lay interpretation of texts that is a recurring motif among the women in this study. As we shall see, while some did look to trusted friends for what I shall call “text support,” in the same way that one might call a helpline for assistance with a temperamental technical device, most of the women trying to find their way through the tangle Jewish and Islamic praxis relied upon their own understanding of the texts, both classical and modern, when trying to determine “which religio-legal precepts to observe and which should be allowed to slip into disuse”.

Lejla was the most emphatic that a solid grounding in texts was critical. When I asked her why she said,

   Because no one can sway me... There’s not one imam that can sway me. On several occasions when I’ve gone into mosques and approached the imam and said “Listen, you

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80 Interview with Lejla. 15 Aug 2011.
81 Interview with Lejla. 15 Aug 2011.
82 See Kecia Ali, Sexual Ethics and Islam, 2.
cannot be telling people that because it’s incorrect. It contradicts that that and that. Where do you get your information? That’s just your opinion. You cannot – these people don’t know any better.” And he’s like – “what do you mean?” There’s no Qur’anic ayat [verse], there’s no hadith to prove what you’re saying – it’s just your opinion. Why don’t you tell them that? 83

When I asked her how the imam reacted when she did that, she continued:

He’s like – you’re right, it’s just what I believe. And I will continue to believe that. So they are not interested in Islam according to the Qur’an and Sunna. They are only interested in their own opinion and the interpretations that their own culture has imposed on them....No one can fool me. No one can tell me that I need to wear a scarf or a jilbab [loose-fitting garment] to be a Muslim. There is no evidence. 84

As we shall see, this defiance in the face of supposed authority figures is another recurring motif among those who feel more competent in their mastery of traditional texts.


Mona’s narrative serves to illustrate this point well. Mona’s confidence with regard to her textual knowledge far surpassed anyone else’s. In the post-session survey that I handed out to all group participants who agreed to be interviewed, she was the only one who circled 10 when asked to rate her knowledge and familiarity with Islamic texts on a scale of 1 to 10. This was not simply hubris – the confidence in her facility with the texts was justified. Indeed, as an expert on the Qur’an and a well-known academic in the Toronto community, she is frequently asked to give the pre-khutbah sermon at more progressive mosques in Toronto such as the Noor, and is one of the few women in the city who has been honoured with such a privilege. 85 However, the mosque closest to her home does not allow a woman to participate in the leadership of the prayers even in this limited way. She found this extremely offensive given that thirteen year-old

83 Interview with Lejla. 15 Aug 2010.
84 Interview with Lejla. 15 Aug 2010.
85 According to Sunni Islamic practice, the khutbat al-jum’ah, or Friday sermon, is delivered in two parts with the imam briefly sitting down in the middle to mark the division between the two parts of the sermon. Mona describes how her remarks delivered prior to the Friday prayer are designated as different and set apart from the formal khutbah, “The jum’ah sermon is supposed to be two parts. You have one part, the imam sits down and he gets up and does the second part. It’s just traditional. If the second imam at the Noor didn’t sit down and get up again, my part could have passed for half a khutbah, but they make a point of in the middle, sitting down and getting up, just to pound in the point that the woman’s part has nothing to do with this.” Interview with Mona. 6 September 2011.
boys in the graduating class of the primary school affiliated with mosque are encouraged to give
the khutbah in the month of May. As Mona explained,

And [the imams] think isn’t this great, because we are teaching them and
couraging them and we are training them to be future imams. Of course, I’m sitting
there and thinking, this is extremely offensive. So you’ll have a grade 8 student go
and give the khutbah just because he has the [right] body part, but a woman cannot
no matter if she is the most educated person in the entire room, the most educated
scholar in the entire building. 86

Although she did not expressly identify herself as “the most educated scholar in the entire
building,” it is understandable that a person who has completed a doctorate in Islamic Studies
would feel extremely indignant at being denied a privilege automatically extended to a pre-
pubescent boy without a high school diploma.

Like Lejla, she too did not hesitate to confront imams when she felt their public comments were
misrepresenting Islam. Although for Mona, the biggest obstacle was about gaining access to the
imam himself. As she explained,

The imam in the pulpit can say the most outrageous things and claim that this is from
God and the Prophet and I don’t have access to him. To go to him, I have to go to so
much trouble...I have to cross the barrier, wait until he is finished speaking to the
men, kick up a fuss in order to get him to come speak to me... One imam has said
publicly that the shariʿa forbids men from talking to women without the permission
of their husband or father. And since he is one of the people who said these
outrageous things, I couldn’t even go speak to him, even that was denied me. Even
going around the barrier, finding your way around it in some way, kicking up a fuss
in order to get to talk to them, even that wasn’t enough. So this is a problem for me. 87

But textual expertise is not just about confronting abuses of authority; it also emboldened Mona
to make decisions about Islamic requirements. In fact, our interview began with Mona, a mother
of four girls, contemplating whether or not she would have circumcised a son should she have
had one. She concluded that she would go against the accepted practice and not circumcise him,
“because there’s no Qur’anic text...For me, the Qur’an is whole, there is nothing missing there.
So I don’t need to complete it with Hadith,” referring to a hadith in SahihSahih al-Bukhârî that
identifies circumcision as one of the five hygienic practices that contribute to or enhance a

86 Interview with Mona. 6 September 2011.
87 Interview with Mona. 6 September 2011.
human being’s fitrah, or natural state. For her, like other Qur’an-only feminists, the Qur’an is sufficient as a guide, and since no Qur’anic text explicitly demands that boys be circumcised, she determined that the evidence in the Hadith is not compelling enough to make it an obligation. Although she mentioned that if she were still living in Egypt, “it wouldn’t even occur to me. Certain things don’t occur to me. Just like it wouldn’t occur to me to drive on the wrong side of the road. This is something that coming from Canada causes me to look at from another perspective, or to reconsider.” It is clear that she feels no need to turn to other sources or interpretations to make decisions about Islamic ritual and practice.

While one might contend that Mona’s scholarly background and academic areas of expertise justify and legitimizes her ability to make these religious choices, it is noteworthy that Mona’s self-assurance with regard to her own textual knowledge seems to extend far back in time to well before the days of her graduate studies. She vividly recalled an episode that occurred when she was a high school student in Cairo and an impudent boy in her class challenged the teacher to explain why she herself was not wearing hijab. Although wearing hijab was not commonplace at the time in Egypt, the teacher acknowledged that the male student was correct and it indeed was her obligation to wear the headscarf. Mona went home and asked her father if this was so, and he told her,

hijab isn’t required at all. But of course, at that age, the teacher has more authority than the father. So I decided I’m going to check it out myself, so I looked at the Qur’an and I asked, exactly where does it say, show me the verses in Surat An-Nur, and I saw that it doesn’t mention the hair at all, it mentions the cleavage, and so I decided it is not required.

88 See Sahih al-Bukhari, Volume 7, Book 72, Number 777.
89 Mona does not explicitly refer to herself this way. However, her textual approach seems consistent with this school of thought. See Chapter 3, ‘Modern Approaches to Hadith Among Muslims’.
90 Interview with Mona. 6 September 2011.
92 Interview with Mona. 6 September 2011.
Again, as was the case with Lejla, we see a trust, that her own interpretation of the text is correct and reliable. It is perhaps no coincidence that this independent exegesis of the Qurʾan, without recourse to tafṣīr, Hadith or later fiqh writings, arises particularly in the case of hijab, something that directly affects a woman’s public appearance, identity and self-concept.

**Contrast Case: “As Long As It Was the Qurʾan and Me Everything Was Perfect”**

Petra described similar struggles with authority and a parallel propensity towards Sa’diyya Shaikh’s “embodied tafṣīr” when it came to hijab, in that she brings “experiential realities, including the dominant gender ideology of [her] sociohistorical context” to her reading and interpreting of classical texts. However, as we shall see, her level of textual confidence was not as high as that of Lejla, Mona, or Nuria, whose narrative will be explored further below. Petra described a very gradual, self-aware and intentional process where she took on Islamic practices one by one, in order to avoid the pitfalls of other converts who are enthusiastic at first and then “get fed up and realize it’s too much and think I can’t do it or I don’t want to do it.”

She explained that because of her husband’s insistence that she wear hijab, her own graduated process of assuming rituals slowly and deliberately got thwarted,

> Hijab is an issue. I used to say, yes, I would like to wear hijab. Which meant, for me, put a piece of cloth around my head. That’s it. For my husband, it means basically, for me to look like a sack of potatoes. I don’t want to look like a sack of potatoes! It never occurred to me that I can’t wear this or that... I haven’t had the opportunity to get there myself. I reached all the way from wearing mini-skirts to wearing long sleeves and long legs and covering my hair. But I didn’t have the opportunity to reach anywhere else by myself because as soon as I reached there, somebody else came and said you have to do this and this and this... I’m at the point where I am wearing hijab only to keep the peace.

When I asked her if she would like to go back to the texts to get a better understanding of the requirements, her reply was wistful,

> Well, the texts...you know the texts. I haven’t gotten answers. My Arabic is not anywhere where I could read the original texts. And when I say “so-called” scholars, there is tons of garbage out there that tells you as a Muslim woman how to

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94 Interview with Petra. 21 July 2011.
95 Interview with Petra. 21 July 2011.
behave. That’s obviously not [what I am looking for]. Then there are renowned scholars and interpreters who wrote the tafsīr, but it doesn’t necessarily mean that. Without being disrespectful and thinking that I know more than them – I don’t obviously – but I believe that these people interpreted these things from a certain cultural background based on their own knowledge and I do [interpret it] from my own background and there is a discrepancy there obviously. And the Qur’an is not as specific as people make it, but you can’t say that...I haven’t really read the scholars. I read the Qur’an and hadith. And I’ve drawn my own conclusions. And as long as I did that I was fine. I think I mentioned this in the group once. As long as it was the Qur’an and me everything was perfect [emphasis mine]. As soon as scholars come into the picture, I have problems.

For Petra, despite feeling at a bit of a loss in the face of the traditional scholarly literature, she still felt empowered to “draw her own conclusions” from the two main sources of the Qur’an and Hadith, and interpret them from “my own background”. She recognized that what passes for scholarly is sometimes suspect, but she trusted her own relationship with the Qur’an. It is interesting that she commented on the lack of specificity in the Qur’an and follows up with “but you can’t say that”, when both Lejla and Mona have said precisely that, and rather unapologetically! Petra, who became a Muslim over 14 years ago, joked that she has “started to become a little bit of a Muslim teenager,” rebelling and questioning things now that she once took at face value. Perhaps it is Lejla’s and Mona’s status as Muslims from birth in addition to their in-depth knowledge of text that allows them the confidence to question the tradition more directly.

**Nuria: “This is My Islam Inside”**

The last example among the Muslim women of the way that textual confidence translates into empowered lay decision-making about praxis and an attendant suspicion of traditional authority can be found in Nuria’s narrative. Nuria had a similar education to Lejla’s, having attended the same Islamic day school for primary and middle school, but with one significant difference: both her mother and her father were actively involved in her religious education. As she explains,

> My mother is much less educated than my father, [but] she’s smart in her own right. She actually taught us everything when we were little...We read a lot...My mom taught us how to read the Qur’an. She taught us, because you don’t need to know

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96 Interview with Petra. 21 July 2011.

97 Interview with Petra. 21 July 2011.
Arabic to know how to read. She didn’t have the proper accent, but somehow we developed it... My dad would get us to memorize the Qur’an and then he would test us....When he would take us to school every day, we would be reciting – all of us – in the car.  

Like Lejla’s father who was constantly quizzing his daughter on more secular subjects, Nuria’s dad emphasized the recitation of the Qur’an, reinforcing the learning that she and her siblings were doing with their mother at home. In Nuria’s case, her parents’ involvement and investment of time in her religious studies far outweighed the impact of the lessons she was learning at school. Since her teachers often hailed from other countries and were less familiar with Canadian culture, they could not relate to their students. This was more than a mere generation gap. As Nuria explained, “Because they didn’t understand us, we didn’t respect them.” As we see, her questioning of people in positions of authority began at an early age.

But Nuria’s textual competence was also tempered by a certain modesty about this knowledge, perhaps because her father was a well-known imam in the community. When pressed, she shyly admitted to knowing off by heart a full four of the thirty ajiza (sing. juz), or sections, into which the 114 chapters of the Qur’an are traditionally divided, and she referenced specific passages in the Qur’an and Hadith several times throughout our conversation either to support her points or as illustrative of some issues that arose when she was attending her Islamic day school. For instance, her criticism of what she referred to as “fatwā culture”, a dependency of lay people on getting answers to issues from perceived authority figures, led her to reference the eponymous passage in Surat al-Baqara 67:76 where the Children of Israel are chastised for requesting too many details about how to sacrifice a heifer. She said: “There’s a part of the Qur’an that says you shouldn’t ask too many questions because you get too many answers and too many restrictions.” Nuria paraphrased the content, rather than quoting it verbatim, which was

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98 Interview with Nuria. 27 Aug 2011.
99 Interview with Nuria. 27 Aug 2011.
100 Each juz is of approximately equal length and most do not end along chapter lines, but often stop in the middle of a chapter. The division of the Qur’an into ajiza is meant to help facilitate the full reading of the Qur’an over the 30-day period of Ramadan.
101 Interview with Nuria. 27 Aug 2011.
something that both Lejla and Mona did in their interviews. But that she used the Qurʾan as a prooftext for her argument, rather than using another image, metaphor or experience to support her stance, is illustrative of how easily she can access and apply religious knowledge in her day-to-day life. Nuria’s critique of “fatwā culture” arose from her own experience as the host of a local radio program for Muslims, since she would regularly get asked to answer questions about Islam on air. But despite being in this public role, and having become someone that others look to for answers, she balked at the suggestion of being an expert in any way. Commenting on the frequent scriptural discussions and debates that she continues to have with her father, she noted,

...my dad would ask me questions about scripture. He’d say, do you really know what you’re talking about? You need to be a scholar before you can make decisions about things. And I’d say, I’m not a scholar, I’m just trying to live my life as a Muslim, and I can never be a scholar, but I do have a certain understanding about things.¹⁰²

From her comments, it is not clear whether she was saying she could never be accepted as a traditional scholar because she is a woman, or if she simply meant that it is not a role she is interested in. While her remarks do have a component of humility, they also belie a degree of self-assurance that her own understanding of Islam is equally as valid as anything that might derive from the scholars. Again this trust and confidence in lay interpretation, and that they understand the spirit or essence of the text, was recurrent among the more learned group participants.

And Nuria’s disdain for traditional authority was similar to the perspectives articulated by both Lejla and Mona. She refused to automatically accept the opinions of other traditional Muslim scholars, explaining that for some time now, she was almost exclusively reading the works of Muslim academics. While she also regularly argued with an imam, in her case, it was the one she lived with at home, so she had none of the access issues that continually beleaguered and frustrated Mona. However, her dialogue was also not as fruitless as the aggravating discussions described by both Lejla and Mona. Indeed, Nuria deeply respected her father and had an ongoing, healthy dialogue with him about women’s issues, suggesting that through their discourse, his views had evolved, (“now, the way he speaks of gender issues is very different. I feel like I’ve made some impact on him”). Nonetheless, she acknowledged that she did

¹⁰² Interview with Nuria. 27 Aug 2011.
occasionally continue to clash with him, especially when the topic of dating came up. Her father was insistent that dating was not an appropriate way to get to know a potential life partner. As she explains,

My father said, “Find me a scholar who says dating is allowed” and I said – and he understands this – “When have scholars ever said anything relevant?” I was so upset. I said, “Look at all the issues that you’ve studied and you’ve found that scholars are inappropriate or they don’t deal with relevant issues, so why do you expect me to find something about dating?”^103

For Nuria, the works of the scholars were so antiquated that nothing they said could have any real bearing on her day-to-day life. Nevertheless, she still managed to turn her knowledge of the sources and the gaping holes in them to her advantage in her dialogue with her dad. As Nadi Inji Khan has noted, this not an uncommon tactic among North American-born Muslims,

The ability of young Muslim Americans to refute their parents by using their knowledge of Islam is an ever-refined tool employed by many clever young Muslims who find it one of the only effective ways of challenging immigrant parental controls. When they are battling with their parents over what they are allowed or not allowed to do, American Muslim children often can use their knowledge of scriptural interpretation to help win the argument...knowledge of Islam proves to be a useful tool for rebellion against parochial parents.”^104

But in Nuria’s case, her challenges to tradition were not merely about parental rebellion. The issues were broader than that for her, touching on questions of authority more generally and who gets to define what is acceptable Islamic praxis:

My parents are really nice, but on [the dating] issue – that was their line. They were like, we met the traditional way, we didn’t even know one another before hand, and it was if somebody sees her, what is going to happen. And I said, “Is Islam only about appearances? Are you only concerned about what other people are going to say or about Islam itself?” So I was really big on that.

My dad said, “I’m a religious leader, we’re seen as a religious family, people look up to us and respect us.”

And I said, “Well I don’t care. I just want to be myself.” He would say, even if there is an allowance within Islam, that doesn’t mean we have to take the allowance, we can live up to higher standards because of who we are.

^103 Interview with Nuria. 27 Aug 2011.

And I said “I don’t want to live like that.” And at that point I said, “you know what, if this is the Islam you believe in, I don’t want to be a part of it.”

He said, “You should better think about what you’re saying, because it’s a very serious statement.”

And I said, “Well, it’s true because I can’t stand it and I feel like I am suffocating. I need to live Islam the way I feel it and that is the only way I can live. I cannot live according to what other people tell me is Islam. This is my Islam inside, this is how I feel comfortable [emphasis mine]. There can’t be a discrepancy.” ... But it shows you that even someone who seems so liberal and understanding and I love him and respect him so much and he is very fair and very kind, but he still has these opinions that need to be challenged, right? It tells you something about how difficult the struggle is.

Like Petra, Nuria does not want to be told how to understand Islam. Again, reminiscent of Shaikh’s respondents, Nuria’s tafsīr is an embodied one, “This is my Islam inside,” she remarked,105 confident that her own reading of the texts is what matters.106

**Textual Confidence and Adapting Praxis**

Indeed, despite Mona’s, Nuria’s and Lejla’s discomfort with traditional authority figures and their refusal to take scholarly texts at face value, traditional Islamic practices were an important part of their lives. Still, they followed these observances on their own terms. Mona read ingredients in all the food she buys and explained that she ate “everything that is not pork or that has anything from the pig.” She explained that other meat does not need to be halal per se, because when she first arrived to Canada she met a very conservative Iraqi veterinarian who

105 This notion of an internalized, embodied understanding and praxis, as we shall see, is echoed in the words of Rachel, one of the Jewish participants.

106 My findings about Muslim women’s strained relationship with religious authority are consistent with those of researcher Karim H. Karim. In his 2009 report “Changing Perceptions of Islamic Authority among Muslims in Canada, the United States and the United Kingdom,” Karim discovered that several of the women participants in his study were reluctant to approach imams for advice. As we can see, this maps onto the experiences of several of the women I interviewed who found themselves at odds with religious leaders in their communities. This lack of confidence in local religious leadership leaves many women trusting themselves and their own access to scholarly, academic and traditional sources as a guide to help them make their own decisions about Islamic praxis. However, in contrast to Karim’s assessment that one of his female respondents did not find fiqh regulations relevant to her life, the women of my study, although frustrated with fiqh, were still observant of dietary restrictions, modesty laws and struggled with ways to make the mosque a welcoming space so that they could continue to participate in Friday prayers. See Karim H. Karim, “Changing Perceptions of Islamic Authority among Muslims in Canada, the United States and the United Kingdom,” IRPP Choices 15, 2 (2009):1:32.
“had gone and checked the slaughterhouses to make sure that they slaughter the meat appropriately. So she had said the meat here is halal, the only thing you have to do is say *bismillah al-Rahman al-Rahim* [Arabic for “in the name of God, the beneficent and the merciful”] before you eat it.” For Mona, this reassurance from an informed expert – not a religious scholar, but an animal expert – was sufficient to justify her adapting of halal restrictions to fit her new environment. Similarly, Nuria explained that she chose to wear hijab, but her reasons for doing so were “partly traditional and cultural.” She elaborated, “At times I have considered taking it off, but it is too drastic a step and I feel that if I want to effect change in the community, this is the best way to do it. People often say that if you have a hijab, you can say whatever you want and it is kind of true.” In Nuria’s hands, this traditional marker of modesty actually enables her to serve as an authority, a powerful and trusted voice in her own community. Finally, Lejla continued to fast and pray, although more in the model of her father. As she explains, “I’ve become more like my father in the sense that it’s all about the spirit of monotheism and not the letter... I won’t view [God] as a punisher or an entity that thinks of me less if I only pray three out of five times because of scheduling purposes, or if I’m sick and I cannot fast.”

107 Interview with Mona. 6 Sept 2011. According to most Sunni schools of law, the *tasmiya*, or recitation of the name of Allah, must occur at the time of ritual slaughter of each animal. There is an allowance to still eat the meat in the Shafi’i school if the tasmia was not recited as an oversight. While there is a hadith in *Ṣaḥīḥ Bukhārī* (Volume 7, Book 67, Number 415) narrated by ‘Aʾisha that suggests that one may recite *bismillah* at the time of consumption, it is commonly understood that those who had slaughtered the meat were new Muslims and that such an allowance would not necessarily pertain to meat slaughtered by non-Muslims. Still, for many Muslims, the recitation of *bismillah* prior to consumption remains a popular practice. For more on ritual slaughter laws in Islam, see Yasir Qadhi, “Is Kosher Meat Ḥalāl? A Comparison of the Halakhic and Sharʿī Requirements for Animal Slaughter” presented to the AMJA Conference on “The Halal and Haram in Food and Medicine” (Los Angeles, California, March 2-4, 2012, http://muslimmatters.org/2012/06/22/is-kosher-meat-%e1%b8%a5alal-a-comparison-of-the-halakhic-and-shar%ca%bfi-requirements-for-animal-slaughter/) (accessed 13 Sept 2012)

108 Interview with Nuria. 27 Aug 2011. This comment is a nice contrast to Kecia Ali’s remark in the previous chapter, that “the beard and the turban” are still regarded as traditional markers of authority. In Nuria’s case, wearing hijab identifies her as a community ‘insider’ and gives her the legitimacy she requires to work for change.

109 The multiple valences and meanings of hijab among contemporary Western Muslim women has been widely studied. For a few of these studies that look at experiences of hijab in Toronto, see Jasmine Zine, “Safe Havens or Religious ‘Ghettos’? Narratives of Islamic Schooling in Canada.” *Race, Ethnicity and Education* 10 (1) (2007): 71-92; Katherine Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes* (London: International Institute for Islamic Thought, 2002).

110 Interview with Lejla. 15 Aug 2011.
accepted interpretation and practice. Significantly, to justify this move she recited two hadith, each attesting to God’s compassionate and forgiving nature. 111

**Textual Confidence and Feminist Midrash: Jewish Women Confront Texts, Authority and Praxis**

Among the Jewish women, Rachel, Rebecca and Ariel displayed the most self-confidence when it came to religious literacy, and as we saw with the Muslim women, this also informed their relationships with both Jewish praxis and traditional forms of authority.

**Rachel: “I Don’t Believe in Judaism with an Iron Fist”**

Rachel, who described classical Jewish texts as “central to everything I do,” also perceived herself to be “the most Jewishly knowledgeable in the group I was in.”112 She credited her day school experience with giving her the technical skills to deeply engage with Judaism,

> I always say that the reason I can engage with Judaism at this level is because of texts, is because I have a base from USDS, and because I have a knowledge of Hebrew and biblical Hebrew. You can’t engage with the Torah at that level without being able to read it. And I truly feel I could not have reached the level I reached with Judaism without that advantage...without access to the texts. You can totally practise Judaism without reading the texts, but if you want to go deeper, for it to come inside you [emphasis mine], you need access it that way, otherwise, it’s just what people tell you. 114

111 See *Saḥīḥ Bukhārī*, Volume 9, Book 93, Number 502, “Narrated Abu Huraira: The Prophet said, "Allah says: 'I am just as My slave thinks I am, (i.e. I am able to do for him what he thinks I can do for him) and I am with him if He remembers Me. If he remembers Me in himself, I too, remember him in Myself; and if he remembers Me in a group of people, I remember him in a group that is better than they; and if he comes one span nearer to Me, I go one cubit nearer to him; and if he comes one cubit nearer to Me, I go a distance of two outstretched arms nearer to him; and if he comes to Me walking, I go to him running.” The other hadith talks about how God much it pains God to see his children suffer. “From ‘Umar ibn al-Khattab. Some prisoners were brought to the Messenger of God. Among them was a woman, searching. When she found a child among the prisoners, she took hold of it, pressed it against her chest, and provided it suck. Thereupon the Messenger of God said, “Do you think this woman could ever manage to throw her child into the fire?” We said, “By God, so far as it lies in her power, she would never throw her child into the fire!” The Messenger of God said, “God has more compassion for God’s servants than this woman does for her child.” (Saḥīḥ Muslim 37:6635).

112 Interview with Rachel. 28 July 2011.

113 This is an acronym for United Synagogue Day School, a parochial school affiliated with the Solomon Shechter Day School Network, the educational body representing the Conservative movement in the United States and Canada. In 2010, the Toronto school received a large donation from a private donor and was renamed the Robbins Hebrew Academy.

114 Interview with Rachel. 28 July 2011.
Like Nuria, Rachel speaks of internalizing Judaism, a sort of imbibing of Jewish praxis, which can only be achieved through direct experience of the texts. While the WBMA respondents’ repeated use of language that suggests an internalization of religious practices does bring to mind the notion of ‘embodied piety’ at the core of Saba Mahmood’s work, as will be discussed further below, Mahmood’s work misses the central role of texts in women’s religious lives. Hence, I find Sa’diyya Shaikh’s notion of ‘embodied tafsīr’ and Plaskow’s ‘feminist midrash’ to be a more meaningful way to characterize the empowered textual interpretation of my informants. Indeed, as evidenced by her comments above, religious texts are the basis of Rachel’s Jewish praxis; Rachel’s confidence about her knowledge of those texts would inform her perspective on Judaism more generally. Again, she emphasizes the importance of going to the source, rather than trusting and relying upon other people’s conception of the mitzvot, the Hebrew word for God-given commandments and obligations, “The whole reason so many of the mitzvot exist is from text, in fact all of them. It’s like if someone tells you to keep Shabbat but you have no sense of where that comes from – it’s all from text. It’s the foundation.”

Notably, the marking of Shabbat, the Sabbath, featured prominently in my discussion with Rachel. Indeed, it was living with an Orthodox roommate after college who “really brought Shabbat into our lives” that encouraged Rachel herself to re-examine her relationship with her Judaism and actively take on more traditional practices as an adult. She mentions that she began observing Shabbat regularly over a decade ago, “I didn’t practise Shabbat in an Orthodox traditional way, but I was marking Shabbat every week. And I was very proud of that.”115 Since then, celebrating and marking Shabbat in a manner that more closely follows classical halakha has become an important part of her life with her husband and her young children. Nonetheless, her years of grappling with texts have imbued her with a certainty that she understands the ‘spirit’ of the tradition, although she does not explicitly use this language to characterize it in that way. This certainty, in turn, empowered her to make some difficult decisions about Sabbath observance during a time of crisis for her family, when her youngest child was hospitalized repeatedly,

This year I have not been focused on religion at all. My personal feeling about religion in general is that I never believe in religious coercion...if you don’t come to

115 Interview with Rachel. 28 July 2011.
it on your own it’s not really going to stick anyways. So if I feel like watching television, then I will watch television. We do celebrate Shabbat every week and I don’t think we’ve missed a single Shabbat, even when [our youngest child] was in the hospital. Maybe one. And we were so aware that we were not celebrating Shabbat. Overall, [pause] it’s been hard this year and I’ve been more interested in watching Glee. That has been my major escape this year, that I deem very necessary...

She continued, explaining her conception of both halakha and mitzvot,

I feel that the more mitzvot that you do...the more holiness will be in your life. If you’re talking about performing mitzvot, like Shabbat – I don’t always agree with traditional interpretations of halakha in some particular areas, but overall when it comes to the whole mitzvot package, can generally – it means path, not law... I don’t believe in Judaism with an iron fist. You have to go from where you are. I don’t believe that there is a God that “cares” like ; I think it is our choice to access God or not, like God is a beautiful holy thing that can be brought into your life that can make you feel holiness in your life. But if you’ve really got to veg and watch television on that Shabbat afternoon, then you gotta do it. You shouldn’t feel worked up. I don’t think that is a major transgression. But I believe halakha has a lot of wisdom, it’s a path, and the more I can get onto that path, for me, the closer to God I will feel.116

Acknowledging that she does not always agree with classical conceptions of halakha, yet believing that it does have a significant place in her life, as a means of facilitating “a feeling of holiness,” she trusts her own understanding of what Shabbat is supposed to be, and given the current stresses in her life, she felt that it was “not a major transgression” to mentally escape by watching television, despite traditional prohibitions around the use of electricity on the Sabbath. We have already noted this struggle with the rigidity of ‘the rule of law’ above, but it becomes clear that, as someone who takes both texts and traditional praxis seriously, she feels entitled to a) disagree with aspects of tradition; b) adapt the tradition to fit with her circumstances and c) that it is no reflection on her overall commitment to Jewish praxis.

Contrast Case: “This Isn’t Your ‘you’ Day, This is Your God Day”
Notably, Natalie had a similar experience of and reaction to Sabbath prohibitions and even found a contemporary authority who validated her position, but perhaps because her turn to tradition was more recent, and her textual knowledge and textual confidence were not as integrated as

116 Interview with Rachel. 28 July 2011.
Rachel’s, an opinion which was perceived to be coming from a ‘higher’ or more immediate authority figure was able to make her re-think her approach. As Natalie explained,

I read a book by [Zalman] Schachter-Shalomi [a leader of the Jewish Renewal movement] called Jewish with Feeling and loved it. He said something like, you shouldn’t write or weave on Shabbos because it was considered work, but if you’re an accountant and your outlet is writing or weaving and that is your favourite thing to do, then do it on Shabbat. And that was a big deal for me because I had no time during the week to watch my favourite movie or to write everything I wanted and I thought, here’s a day to take off, it’s my “me” day. But then I got shot down with, this isn’t your “you” day, this is your God day. This is the day that you do what God wants, not what you want. Don’t be controlling your own destiny.117

It is not clear exactly who “shot her down,” for making this argument about redefining rest on the Sabbath, but Natalie’s active involvement with the Orthodox organization Aish Ha-Torah, and its central Toronto synagogue The Village Shul, which does outreach to disaffected Jews in order to get them more involved in traditional Jewish practice, came up repeatedly in our interview. Natalie was working in the synagogue office at the time, and commented more than once on the difficulties she was having committing to their “You have to follow everything”118 philosophy. She also mentioned disagreements with her boyfriend, a more seasoned ba’al teshuva, or ‘returnee to the faith’,119 who believed “in the letter of the law [and that] we have to stay humble in our own interpretations” while Natalie herself was more inclined to “come up with my own interpretations”.120 Despite this preference for self-reliance in terms of understanding the text, the environment in which she was immersed was more akin to Heilman’s ‘lernen’ groups, where repeating the ideas of the sages was more valued than innovative and creative ways of opening up the text. So either one of these “authorities” in her life – the leaders of the synagogue or her more halakhically-observant partner – may have discouraged Natalie

117 Interview with Natalie. 22 January 2010.
118 Interview with Natalie. 22 January 2010.
119 Ba’al teshuva literally means ‘master of repentance’ and is a term now used to refer to those Jews who grew up more secular, but have since taken on a more traditional Jewish lifestyle. In popular discourse among English speakers, the term is often shortened to ‘BT’ and those belonging to this group are contrasted with the ‘FFB’, the Frum-From-Birth, those who grew up in an Orthodox home. On the precarious role of the ba’al teshuva in their adopted Orthodox communities, see M. Herbert Danziger, Returning to Tradition: The Contemporary Revival of Orthodox Judaism New Haven: Yale University Press, 1989), 307-308. For work specifically exploring women’s involvement in the ba’al teshuva movement, see Lynn Davidman, Tradition in a Rootless Word: Women Turn to Orthodox Judaism (Berkeley: University of California Press, 1991).
120 Interview with Natalie. 22 January 2010.
from fully embracing Schachter-Shalomi’s notion of privileging spirit over law and “getting some Sabbath” as he refers to it, even by playing music, which would traditionally be prohibited according to Orthodox halakha.\textsuperscript{121} While Rachel’s own rationalization for compromising on her Shabbat observance is a similar invocation of spirit over law, (“I don’t believe in Judaism with an iron fist”), perhaps because Rachel’s hands-on experience with classical texts was more extensive than Natalie’s, she feels less of a need for approval from other authority figures.

\textbf{Authority, Belonging and Acceptance: Finding the ‘Right’ Community}

With this in mind, it is perhaps significant that Rachel referred to her like-minded friend who initially introduced her to regular Sabbath observance as “flexidox.” As Rachel explains, her friend “had a really open mind, was gay positive, but still [was] clearly Orthodox.” Indeed, Rachel’s embracing of the term “flexidox” to characterize Orthodox people in her community who share her value system speaks to her relationship with authority overall: religious texts and spiritual leaders are to be respected, as long as they have some ‘wiggle-room’ or flexibility in their theology. Accordingly, while most of the Muslim women had difficulty with authority figures in the community or with family members who tried to define Islam for them, the majority of the Jewish women were fortunate to have rabbis and teachers in their lives whom they did respect. As alluded to earlier, the existence of denominations in Judaism which allow adherents to find a community which most closely reflects one’s own philosophy may account for this difference, as might the possibility of female rabbis to act as role models. Tamara in particular credited her mom and her female rabbi, who by example, reinforced the message that when it came to Torah study, “all adults were pretty much equal as long as they have intellectual capacity and interests.”\textsuperscript{122} Rachel too stated emphatically, “I love the rabbi [of my synagogue]” and recognized him as being responsible for creating a welcoming environment at the ‘traditional egalitarian synagogue’ where her family went for services. As her rabbi explained, the synagogue follows “traditional ritual, but with non-traditional access,” meaning that men and women are able to participate equally in all aspects of the service and those who self-identify as gay have equal access to marriage.


\textsuperscript{122} Interview with Tamar. 18 Jan 2010.
However, that is not to say that the Jewish participants expressed no difficulties whatsoever with Jewish texts, figures and institutions that were deemed authoritative. While Rachel found her own rabbi to be a sympathetic authority figure and ally, she could not say the same about the leadership and philosophical outlook at other Orthodox synagogues in Toronto. She felt that more traditional Orthodox environments, such as The Village Shul where Natalie was a regular attendee, were simply too much in conflict with her identity as a feminist, gay-positive woman. As she explained when I asked about the role of feminism in her life,

> My social values..... are absolutely central to my practice of Judaism. My belief in having a gay positive, woman-positive [environment] is absolutely central. In a traditional Orthodox synagogue, they would not say that they are not woman positive, but... I simply do NOT agree with the way they see women. They see separate but different, and it’s all holy and revered and all these good things, but actually I want my kids to grow up thinking that they can read Torah. Not to think, to know they can read Torah. I think they can be rabbis...[My feminism is] more than my Judaism, if I can say that. It comes first. It’s not that I could ever not be Jewish, but it would always be... [she trails off] Especially this year. Being feminist and gay positive are just central to my life. Not that being Jewish isn’t...But I could never exist in a world where that was not...I could never be part of a community where that was [not] part of it as well. 123

For Rachel, the fact that feminism and Judaism were compatible was a non-negotiable and necessary aspect of her praxis. In this respect, Rachel’s reading of Jewish texts has resonances with Plaskow’s conception of feminist midrash which “shares the rabbinic assumption that the Torah is continually generative, that “everything is in it” – including new feminist insights.”124

For others though, there was a deep and seemingly untraversable chasm between traditional approaches to text and praxis and feminist discourse. As already noted above, this unbridgeable divide was the most significant sticking point preventing several of the interviewees from fully feeling ‘at home’ in many of the diverse Jewish and Muslim communities that Toronto has to offer.

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123 Interview with Rachel. 28 July 2011.

Rebecca: “More Kosher than Kosher”

But Rachel’s conflicts with more traditional forms of authority were also evident in Rebecca’s and Ariel’s narratives, who both felt they had a similarly expert command of traditional texts. Like Rachel who preferred to engage with Judaism on one’s own terms, instead of just following “what people tell you,” Rebecca would feel empowered to make difficult decisions about her praxis based on her textual knowledge as well. As an educator who has taught in numerous Jewish settings in both the United States and Canada, Rebecca regarded herself as an “excellent role model for her students” because “I know a lot so I can really engage with and take care of the Orthodox families, but I also have my own questions, so I can meet the needs of the totally disaffected students.”

Although she had grown up in a Conservative Jewish household and then followed a more halakhic lifestyle for several years as an adult, she had recently re-evaluated her understanding of tradition. As she herself put it, “I think my sense of what sacred meant in daily things shifted.” One of the results of this questioning process was a reconsideration of the laws of kashrut, Jewish dietary laws. As she explained,

We did recently decide to make our fleishigs [meat dishes] farm-raised rather than kosher. Which took conversations. We had agreed to do it and then still didn’t do it for a few months... One friend of mine [in New York] has a relationship with a farmer...So he supplies the shochet [ritual slaughterer] and pays for and sells the kosher meat to his friends and the farmer gets the rest of it.... So if that started happening [here in Toronto], I’d for sure buy kosher, farm-raised meat. But in the meantime, farm-raised meat seems more kosher than kosher. And there are interesting things, like working at a pluralistic [Jewish day] school, anything that comes into the school has to have a hekhsher [kosher certification label] on it, which means it has to be packaged, which means that most of the stuff that is brought in is real crap. I remember, when I was [at a less traditional day school] my mom would make cupcakes... suddenly all the food that is brought into the schools is all highly-processed, full of corn-based sugars, unhealthy, bleached white crap, like there’s nothing kosher to me about that , and the care for the Earth, all of that, so there’s a lot of things about Orthodox practice that don’t speak to me about Judaism, which I think has also pushed me in a different direction.

Again, her confidence that she understood the ‘true’ essence of kashrut, that it is based on an ethic of care for animals and the earth, compelled her to choose farm-raised meat over kosher meat,

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125 Interview with Rebecca. 14 Sept 2011.
126 Interview with Rebecca. 14 September 2011.
127 Interview with Rebecca. 14 September 2011.
convinced that, given her present options in Toronto, the farm-raised meat is “more kosher than kosher.” Given what she knows about Jewish texts, contemporary Orthodox practice, “doesn’t speak to her” if its conception of kashrut privileges excess packaging and overly-processed foods in hermetically-sealed containers over home-baked products in less than strictly-kosher ovens. In the same way Rachel balances her desire for tradition with her commitment to feminism and gay rights, Rebecca must weigh her belief in the need for environmental sustainability against her beliefs pertaining to the importance of kashrut.

While both women, whether consciously or not, appealed to the notion of a ‘meta-halakhic principle’ an idea that undergirds the spirit of the law, in order to reconcile these competing values in their lives, they were also both fortunate enough to be engaged with Jewish communities where these ideas were not regarded as mutually exclusive, so staying true to their own convictions was not a constant battle with traditional forms of authority. Indeed, Rebecca’s concerns are echoed among adherents of what has been deemed the “New Jewish Food Movement”, a popular, grassroots initiative that “marries kashrut and environmental sustainability towards a new reading of traditional Jewish practices.” Perhaps not surprisingly, classical texts play an instrumental role in this movement, where Jewish sources are re-defined and read “for their alignment with more universal contemporary values about sustainability and social justice.” Hazon, the American Jewish organization seen as spearheading the movement develops materials in which “berakhot over food are re-interpreted as a system of mindfulness that fosters our awareness of food sourcing, and kashrut itself is emphasized as an ethical discipline. Many of the agricultural laws in the Bible become aligned with contemporary issues concerning the ethical treatment of food laborers and feeding the world’s hungry.” So, all of these re-calibrations of Jewish food practices are not regarded by the movement’s members as a reckless abandonment of halakha, but rather as being very much grounded in the ethos of traditional Jewish texts.

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128 On meta-halakhic principles and the difficulty in finding textual support for an all-encompassing extra-textual philosophy or theology, see Tamar Ross, Expanding the Palace of Torah, 60-100.
130 Ibid, 59.
131 Ibid, 59.
Indeed, the New Jewish Food Movement is gaining ground even in Toronto Jewish circles, with environmental organizations such as Shoresh beginning to make their mark in the community. Nonetheless, like Rachel, Nuria, Mona and Lejla, Rebecca also battled with authority and communal perceptions of legitimate praxis in other areas, finding the Toronto Jewish community in particular to be a constant thorn in her side. Having lived in both New York and Jerusalem, Rebecca characterized the Toronto Jewish community as “Boring and conservative. Like small ‘c’ conservative.... very closed to a new tune for Adon Olam [traditional prayer that ends morning Shabbat services], let alone things to do with [alternative perspectives on] Israel or queer stuff.” And when it came to the practice of brit milah, or circumcision, Rebecca found the Toronto community to be oppressively close-minded. Although she and her husband had “read extensively...[and] spoke to people across the globe” before deciding that they would not circumcise their son, when the male child was born, they eventually succumbed to the crushing social pressures around them and went ahead with a ritual in which they no longer believed. As Rebecca explained in her blog, Most of what came at us was fear - fear our son will be made fun of, fear he won't feel Jewish, fear he won't be Jewish, fear he won't be accepted by the community, fear that synagogues won't allow him to have a Bar Mitzvah or get married. Many discussions were had, all with non-compelling arguments about why brit milah is a good thing (or at least not such a bad thing). And so, against our values and beliefs, against our thoughtful Jewish practice, against our true desires to teach our son to fight for what he believes to be right, we succumbed to social pressure and had a brit milah performed on our 8-day-old son.


133 This comparison of the Toronto Jewish community with Jewish communities in New York and Jerusalem came up in six of the eight interviews I did with Jewish women. The consensus among the women seemed to be that the Toronto community was strangely conservative and resistant to change given its size and long history as compared with other Jewish communities in large urban American centres. For more on the differences between the Canadian and American Jewish communities see Ira Robinson, “Canadian Jewry Today: Portrait of a Community in the Process of Change” (September 2006), http://www.jcpa.org (accessed 16 July 2010).

134 This subject did not come up in our interview per se, but Rebecca’s blog is public and after this posting we exchanged several e-mails on the subject. The blog focuses on the conservative and close-minded nature of the Toronto Jewish community, a topic which we explored at length in our interview as well.

In Rebecca’s case, despite her extensive reading of Jewish sources, and her conviction that “it is a ritual that is far outside the parameters of my understanding of God and of community” the perception that the community as a whole might not accept her child, because of a more traditional reading of the sources, proved to be too much to bear.

**Ariel: “One out of 1000 die from disease, the rest die from having sex”**

Ariel too found that her familiarity with Jewish texts and probing nature put her at odds with the community with which she was most closely engaged. Although she grew up in an Orthodox, South African home and attended a Chabad-sponsored synagogue for weekly Shabbat services throughout her life, she felt like she “had one foot in the religious community and one foot in the secular community.”

While she saw many of her friends getting “pulled in” by the Chabad movement, she felt she was “way too knowledgeable and way too questionary [sic] and too critical” to be similarly sold on their approach to Judaism. This was perhaps due to her mother who was constantly helping her push the boundaries in the synagogue. As she explains,

> My mom was a big influence on me and religion...I think I really understood the woman’s role in Judaism or in shul [the synagogue] at least when I was 11 and they called up the kids. I remember I got pushed off the bimah [elevated platform where Torah reading occurs] and was told not to come up. And I remember going crying back to my mom and she was like [puts on South African accent] “It’s all right, you’ll go up there”. And she pushed me to go up there. And my dad was the gabbai [synagogue caretaker/sexton], so I got in.

These tensions between the two worlds in which she lived – the ‘religious’ world and secular one – and the differences in terms of opportunities for women, would intensify for her as she got older. She explained the anguish she experienced watching her friend, the rabbi’s daughter, being denied the advantages given to her brother.

> It’s so sad, I have a friend who’s the rabbi’s daughter, SO smart, so brilliant, the way she questions. Critical ideas. The way she’s been raised doesn’t give her aspirations and it’s so sad. She wouldn’t see her life as being wasted. She’s going to have a

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136 Interview with Ariel. 16 Aug 2011.

137 Ariel attributes this to the fact that “the rabbi’s daughters who were my age weren’t going up.” In many modern congregations, children of both sexes under the age of 12 and 13 are often welcome on the bimah, especially towards the end of the service when kiddush, the blessing over the wine, is recited on Shabbat mornings. However, as a girl reaches the age of bat mitzvah, her presence on the bimah would be frowned upon in an Orthodox synagogue, as only men of age are allowed to conduct prayers and Torah readings.

138 Interview with Ariel. 16 Aug 2011.
beautiful family and raise them in Torah and mitzvot, but I see her being so much more because she’s so smart. Her older brother is not as smart. But he’s getting pushed to be the rabbi because he’s the son. It hurts me when I see these religious girls that are so smart.\textsuperscript{139}

While the rabbi’s daughter has accepted the terms and conditions of living an Orthodox halakhic life, Ariel’s struggles with it are palpable. Like Mona, Lejla, and Nuria, she described having ongoing arguments with her rabbi and rabbi’s wife about the place of women in Judaism, “I got into a debate with them because they said feminism and Judaism cannot mix. And I said, “Yes, they can” and I left crying.” Nonetheless, she still feels that “there’s something important about remaining [committed] to the religion and the halakhic tradition.”\textsuperscript{140} In some ways she envies her friend, the rabbi’s daughter, who is able to give herself over to a traditional lifestyle and simply have “a beautiful family raised in Torah and mitzvot.” Like Rachel, she is in search of a community where her feminism and Judaism can peacefully co-exist. Significantly, being exposed to the work of Orthodox feminist scholar Tamar Ross helped ease some of the isolation she feels. Reading it felt “like a diary. And I loved it because I felt like, ‘Someone else thinks this too!’” She also had recently become involved with the Partnership Minyan, “an Orthodox service where they try to involve women as much as halakhically possible.”\textsuperscript{141}

But her relationship with traditional texts is, at first glance, most similar to the way that the Muslim women discussed thus far – in particular, Mona, Lejla and Nuria – engage with the text. Just as Mona, Lejla and Nuria used their knowledge of texts to challenge authority, Ariel too used text as a tool to point out the legal corpus’ outdated modes of reasoning.

As was the case with Nuria, this use of text arose as part of a healthy repartee with her father about Jewish law. Their ongoing dialogue was precipitated by the fact that, in their family, Ariel’s dad is the most religiously observant, concerned with the “nuts and bolts” of the tradition, in contrast to her mother who is “the most spiritual...more about loving [and] appreciating

\textsuperscript{139} Interview with Ariel. 16 Aug 2011.
\textsuperscript{140} Interview with Ariel. 16 Aug 2011.
\textsuperscript{141} Interview with Ariel. 16 Aug 2011.
When I asked about her current engagement with Jewish texts, she described one of these sparring sessions with her father,

I still read the Shulhan Arukh. Any time I have an argument with my dad, I say, “I’ll pull out the Shulhan Arukh and see what it says”. My favorite part is the modesty section because I just think it’s hysterical. How can you take a text seriously when it tells you if you have too much sex your hair will fall out? Of course, I turn to my dad who’s balding quite a bit and say, “Clearly you’ve been having too much sex”. One out of 1000 die from disease, the rest die from having sex... And the fact that I studied “Sex and Gender and the Renaissance” and I can clearly see how Christian influences can be. I can see the push of influences there and how Orthodoxy doesn’t want to talk about it.

Ariel playfully ribbed her father and at the same time mocked the Shulhan Arukh – the final word on Orthodox Jewish praxis – for its ludicrous (by modern standards) connections between excessive sexual activity and hair loss. Her fluency, and confidence to be able to pick a volume off the shelf, rifle through it and find the exact text that will prove her point, is remarkable. It is worth noting that her comment, “One out of 1000 die from disease, the rest die from having sex”, is a direct quote from the text.

Ariel’s interaction with the Shulhan Arukh is unique among the other types of textual engagement we have noted thus far. Despite the fact that Ariel grew up Orthodox, her reading of the Shulhan Arukh is very different from that of the Religious Zionist women of Tamar El-Or’s study who read the same text hoping “to find whatever is possible in the existing material and change it.” Unlike the women of El-Or’s study, Ariel’s secular university education has given her a new filter through which to view Jewish legal texts. Now that she understands the sources in their historical context, she can see the way that 16th century Christian notions of sexuality and asceticism could have easily influenced the writings of Yosef Karo, and that the attendant ideas about sexuality are similarly stuck in the 16th century. Ariel’s mode of

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142 Interview with Ariel. 16 Aug 2011.

143 Ariel is referring to the subsection of Hilchot Tzneiut, the Laws of Modesty, in Orah Hahayyim 240: 14 in which Yosef Karo suggests that “Anyone who immersed in copulation, becomes prematurely old, his strength diminishes, his eyes dim, a foul odor comes from his mouth, and the hair of his head, his eyebrows and his eyelashes fall out. His beard, his armpits and his legs grows thicker, his teeth will fall out, and many other pains aside from these will come upon him. The greatest physicians have said: One in a thousand dies of other maladies, and a thousand from too much sexual intercourse. Therefore, one must be careful.”

144 Interview with Ariel. 16 Aug 2011.

145 See Tamar El-Or, Next Year I Will Know More, 69.
interpretation is perhaps more akin to Adler’s “hermeneutic of laughter” which reveals the absurdity of the text, especially when it is read by women, an audience for whom it was not originally intended.\textsuperscript{146}

In this sense, Ariel’s reading of the text is also rather different from the readings of the Muslim women informants. While the Muslim women participants easily railed against perceived authority figures and unabashedly questioned their opinions, they do not go so far as to mock any of the textual traditions. Perhaps this is because of the type of texts with which most of the Muslim women were engaged, namely the Qur’an and Hadith. If there had been an equivalent familiarity with fiqh manuals, texts more readily recognized as derived from human reason, a similar hermeneutics of laughter might have been irreverently applied to them in the way that Ariel felt free to poke fun at the Shulhan Arukh.

**Differences in Jewish & Muslim Engagement with Scripture**

Muslim women, however, were clearly not oblivious to difficulties and gender inequities in more revered texts as well. As Nuria in particular said, “Sometimes I bracket it off and say well, I’m not going to deal with this. Sometimes I say God could not have possibly intended this for me, being a just God. I don’t know what I’m going to do with this, but it doesn’t fit in with what I understand about my religion or about God.”\textsuperscript{147} Lejla too was aware of and troubled by the gender inequities espoused by the texts, even the Qur’an.\textsuperscript{148} As she explained, “Muslim men

\textsuperscript{146} Although, even Adler suggests that the laughter is not entirely a mocking one, but one that helps to rebuild a new vision. She insists, the hermeneutic of laughter is “not the laughter of separation and superiority, the laughter that says, ‘I could not be a fool like you.’...It would be ungenerous to regard the struggle for holiness, which was the conscious motivation of our storytellers [the rabbis], merely as a cloak for their unconscious struggle for hegemony...Simply holding the stories up to ridicule, stripping them of redemptive potential, does not effect the holy comedy we as an audience must bring about.” See Adler, *Engendering Judaism*, 18.

\textsuperscript{147} Interview with Nuria. 27 Aug 2011.

\textsuperscript{148} This difficulty with even Qur’anic material should not be so surprising. Nonetheless, in the 2009 report on Western Muslims and authority cited earlier, researcher Karim H. Karim describes one of his female respondents, AHU as “breaking with tradition” (19) in her characterization of the Qur’an. AHU unabashedly states, “There’s stuff in the Koran I cannot agree with, so how can I give validity to the rest of the tradition?” Karim sees her comments about disagreeing with some Qur’anic content as “breaking with the fundamental tradition of identifying Muslimness with complete acceptance of the holy book.” (19), To begin with, I’m not sure that ‘Muslimness’ can be so defined, as there has certainly never been any consensus as to what being a Muslim entails, as evidenced by the numerous different sects, schools of law, and the voluminous output of commentary on every aspect of Islamic faith and practice. Secondly, this is not so far from comments made by contemporary scholars, including Abou El Fadl whom AHU acknowledges she has read, as well as Wadud and Shaikh, as noted earlier. While none of the Muslim women I interviewed went so far as to say that they do not agree with material in the Qur’an, and in fact, most had
cannot fathom what it’s like for a Muslim woman because they are not in our shoes. The text talks to them in one way and us in a different way.” When I asked her to explain what this meant, she reflected,

At a younger age, it was very, very confusing and very upsetting. Why would the text – it seemed very male-oriented and male-dominated and I just couldn’t fathom – women are the mothers of these males, women are the life-givers, it just doesn’t make sense, I mean, come on. Men – how are they to function without women in their lives and I just didn’t understand why such a sacred text could do that. But then coming to university it made sense, what with the translation and whatnot, it was just easier for it to be translated in that mannerism [sic].

Lejla’s strategy for dealing with what she perceived to be a textually entrenched bias against women was to attribute these inequities to poor translation. Although she did not provide a specific example, she also acknowledged that there were certain textual problems that could not be explained away so easily. She credited the “provocative” work of Ayaan Hirsi Ali, former Muslim, activist and Dutch-Somali politician, for helping her question her beliefs,

[Hirsi Ali] posed questions like everyone does – why was there never a female Prophet? Why is everything in the Qur’an he he he? And why when a Muslim male dies is he going to get four virgins upon death and entry into paradise. What does the woman get? Does she get anything? Why can a man get four wives and a woman just gets one husband? Why can a man marry a Christian or Jewish woman, but if a Muslim women marries them she is destined to hell? So she posed such very interesting questions, which as a woman we relate to and I’m sorry to say today we really don’t have those answers. 149

While the Jewish women in the study clearly struggled with halakha as a system, they did not express the same distress over particular Torah or even Talmudic passages. Perhaps this difference can partly be attributed to the same difference noted in Chapter Two between the Biblical and Qur’anic female exegetes; while the Qur’anic interpreters were clear that the Qur’an was Divine Speech, the Biblical scholars were more inclined to treat the text as wholly human in origin. Although I cannot say for certain that this same scriptural skepticism applied across the board among the Jewish informants, Rebecca in particular, as already noted, was clear that “the

an opposite response, holding fast to the Qur’an over other sources of guidance, AHU’s sense of difficulty with some Qur’anic content would not be met with any raised eyebrows among the Muslim women participants in my study.

149 Interview with Lejla. 15 Aug 2011.
texts were all written by men within a patriarchal system."¹⁵⁰ She felt it was important for women to learn traditional texts, but she also felt it was critical for them to “know that they are not from God...Not to adopt them as truth, but to engage with them as texts written by people.”¹⁵¹ Rebecca herself acknowledged,

I would have become ‘Orthodox’ if it wasn’t for three issues in halakha being: women, queer stuff and the treatment of the non-Jew... It’s like those three things [their treatment within the halakhic system] are not sacred, that’s not God, and if it is God then I don’t believe in God. And if it is not God, then why would I believe it and why would I follow it?¹⁵²

Once she no longer conceived of the text as divine, her struggles with these issues changed. Nonetheless, she could still remain committed to Jewish practice, as, apart from Orthodoxy, there are several other Jewish denominations and grassroots movements where this seeming contradiction – a lack of belief in the divinity of Torah and yet a firm commitment to the practices outlined in its pages – is not only tolerated but embraced. However, the same textual/theological dissonance is not currently available for Muslim women, which may account for the differences in the way these texts were problematized by Jewish and Muslim women.

**The Interfaith Hermeneutic: Uncanny Similarity**

Keeping this difference in mind, what exactly did the interfaith encounter bring to the participants’ understanding of the texts? To begin with, despite the fact that the texts were littered with foreign words and concepts from the perspective of outsiders, participants felt an uncanny sense of similarity in their readings of one another’s texts. As Petra explains,

In general, I often had the feeling that when we were talking about the Jewish texts, we could have interchanged it, I felt one is just like the other. They were that similar. Even the way of interpretation. Everything was interchangeable for me. So in that sense, it did not feel so much like a dialogue as one person was saying so and so and everybody else was saying, “Ya, ya!” It was more of a feeling that you discuss one text and one group rather than two groups because everything was the same. It was fascinating. Like a big ‘Aha’.¹⁵³

Yasmin’s reflections on the interfaith readings were similar,

¹⁵⁰ Interview with Rebecca. 14 Sept 2011.  
¹⁵¹ Interview with Rebecca. 14 September 2011.  
¹⁵² Interview with Rebecca. 14 Sept 2011.  
¹⁵³ Interview with Petra. 21 July 2011.
...there is so much in common. I think sometimes people tend to forget that. Each faith has its own starting point, but it’s not a discontinuum. It always flows out from something...so you can say, ‘oh, I see where that comes from.’...We saw a lot of similarities when we looked at the text, a lot of similarities. Obviously, they have their own unique bent and perspectives, but I think what came out overall for me were the similarities...

Another example from my field notes illustrates this odd sense of familiarity that the texts produced. While one might have expected the Jewish women to speak more authoritatively about Jewish texts, and the Muslim women to have a monopoly on interpreting the Islamic texts, this was not always the case. In one of the first sessions with Group A, we looked at one source in each tradition that underscores the permissibility of women studying religious text. A reference from the Tosefta was most interesting to Yasmin, since it allowed menstruating women to study Torah. Based on her own experiences of Islamic restrictions around prayer and reciting from the Qur’an during one’s period, she found it surprising that a menstruant could have that kind of contact with a sacred text. The Jewish women had much less to say about this surprisingly. On the other hand, when it came to reading the Hadith source from Bukhārī’s Book of Knowledge, which portrays Muslim women requesting and receiving a dedicated day to study with the Prophet, the Jewish women jumped in with several comments. Ariel read it as a tokenistic move, that he gave them only one day. I noted that the Arabic text would have been useful to have handy to make it clearer that this was a regular occurrence. Still, another Jewish woman named Leah noted that the reference to hell as part of the material that the women were studying with the Prophet seemed very strange, like it did not fit with the rest of the text. I told her that was exactly what I was going to ask about. Another Jewish participant named Meital then suggested that perhaps it was meant to comfort women who had lost children. So as the women tried to grapple with new and unfamiliar material, in this group, they were not shy about chiming in, presenting an opinion and trying to resolve difficulties in the text, regardless of which tradition it came from.

154 Interview with Yasmin. 16 January 2010.
155 See T. Ber. 2:12, “Zavim, zavot, menstruants, and parturients are permitted to read the Torah, and to study Mishnah, Midrash, laws and homilies.”
156 See Sahih Bukhārī, Volume 1, Book 3, Number 101, “Some women requested the Prophet to fix a day for them as the men were taking all his time. On that he promised them one day for religious lessons and commandments. Once during such a lesson the Prophet said, “A woman whose three children die will be shielded by them from the Hell fire.” On that a woman asked, ”If only two die?” He replied, “Even two (will shield her from the Hell-fire).”
When confronted with more blatantly unflattering texts about women in that same session, the participants were just as game to deconstruct and problematize the sources. We explored the hadith on women being the majority among the hell-dwellers\(^{157}\) and the Talmudic source describing women learning Torah as being equivalent to learning lewdness.\(^{158}\) Yasmin understood that there were at least two ways to read the latter, that either you teach them that knowing Torah will save them or you teach them Torah so that they know not to behave that way. Although Yasmin could not possibly have known this, these different ways of reading the text have been noted in particular by Judith Hauptman and Daniel Boyarin.\(^{159}\)

Leah again had an interesting reading of the hell text and noted that the Prophet in this text seemed entirely different from the Prophet in the other sources and that this was likely the narrator’s understanding of what the Prophet said. I explained that several scholars had found the isnad of this text to be unreliable. Yasmin also quickly grasped that there was an inconsistency in the hadith: that either they were biologically deficient or the law had restricted them, but that it couldn’t be both. She wondered why God would put those limits on them and then punish them for it in hell? Interestingly enough, this is precisely what Abou El Fadl argues in *Speaking in God’s Name*.\(^{160}\) Whether or not Yasmin was familiar with this work was not clear, but her incisive reading of both the Jewish and Islamic texts and ability to get at the heart of the problems presented by both these hard-to-swallow sources was fascinating. Although I feared

\(^{157}\) See *Saḥīḥ Bukhārī*, Volume 1, Book 6, Number 301, “Once Allah’s Apostle went out to the Musalla (to offer the prayer) o’Id-al-Adha or Al-Fitr prayer. Then he passed by the women and said, “O women! Give alms, as I have seen that the majority of the dwellers of Hell-fire were you (women).” They asked, “Why is it so, O Allah’s Apostle?” He replied, “You curse frequently and are ungrateful to your husbands. I have not seen anyone more deficient in intelligence and religion than you. A cautious sensible man could be led astray by some of you.” The women asked, “O Allah’s Apostle! What is deficient in our intelligence and religion?” He said, “Is not the evidence of two women equal to the witness of one man?” They replied in the affirmative. He said, “This is the deficiency in her intelligence. Isn’t it true that a woman can neither pray nor fast during her menses?” The women replied in the affirmative. He said, “This is the deficiency in her religion.”

\(^{158}\) m. *Sotah* 3:4; b. *Sotah* 21b, “Ben Azzai says, a man is bound to teach his daughter Torah, that if she drinks [the bitter waters], she may know that the merit suspends its effect. R. Eliezer says, every one that teaches his daughter Torah, these teach her folly [or, lasciviousness]. R. Yehoshua says, a woman prefers one *kab* [a small portion] and folly to nine *kab* and piety. He would say, a foolish pietist, a cunning rogue, a female Pharisee, and the plague of Pharisees, all these bring destruction upon the world.”


that the women might instinctively try to rehabilitate their own textual traditions while critiquing the texts over which they felt no ownership or allegiances, there seemed to be a readiness to look for multiple ways of reading, and either call the texts to account or give them the benefit of the doubt, regardless of their religious provenance.

**Group Dynamics: Venue, Food, Physical Space and Group Commitment**

But although the texts were ostensibly the reason that these women were coming together, the interactions between each of them involved much more than that. Indeed, there were a myriad of other dynamics bubbling on or just under the surface which also had an impact on the tone and tenor of the meetings. Again, WBMA met in three different permutations: there was the Community-based group of mostly young professionals and the two Multi-faith Centre Groups, Group A and Group B, which consisted mostly of university students. The dynamics of each of these groups was markedly different, as we will note.

**The Community-based Group: Shared Food and Accelerated Intimacy**

The atmosphere in the Community-based group was undoubtedly the warmest and most informal. It often took us much longer to begin the study sessions and people often lingered long after the formal reading of texts had finished. The shared food which often consisted of homemade baked goods, or holiday-related treats, as well as sitting on couches surrounded by people’s personal photos and treasured artifacts all contributed to an accelerated intimacy. When I reflected on this in discussion with Rebecca, a participant in one of the Multi-faith Centre groups, she suggested, “You get to walk around someone’s house. And that debunks all sorts of preconceptions.” The level of commitment to the Community group was quite strong. Although attendance would wax and wane over the years with several women leaving the country or having to stay away because of new family or work pressures, several women who attended the very first sessions continued to participate as often as they could even eight and nine years later.

**Multi-faith Centre Groups**
While the Multi-faith Centre groups met more frequently (twice a month, instead of once a month), Group A seemed not to coalesce as well as I had hoped. To begin with, two of the women – one Jewish Israeli and the other Muslim – stopped coming after the first session. Interestingly enough, both these women were actively involved in Israeli and Palestinian causes on campus. As I would note throughout the lifespan of the groups, those who were only interested in Middle Eastern politics never stayed. As mentioned earlier, an interest and investment in religious texts was critical to the desire to remain in the group. As well, while university students do tend to get busy at different points during the semester, there seemed to be a general lack of commitment to the group – on one occasion, despite having received several RSVP’s for that week’s session, not a single person attended. The problematic food offerings, the timing of the sessions and the setup of the room itself may all have contributed to this sense of distance in the group.

**Group A : “Space for Other Feelings to Take Hold”**

While I would bring a package of strictly kosher cookies and tea to each of Group A’s meeting, on one occasion I noted that the particular cookies I had brought that week had ‘chocolate liquor’ as an ingredient. While several of the Muslim participants reassured me that chocolate liquor was simply a cocoa mass with no alcohol in it, I wanted to be extra careful, so I quickly whisked the package off the table. And indeed, I did notice one of the Muslim women flinched at the mere mention of ‘liquor’ around food that she had intended to eat. But when one of the Jewish women offered to bring baked goods from home, food quickly became even more fraught, as another Jewish woman who was strictly kosher indicated that unless the items were baked in a kosher oven, she would not be able to eat them, although she did not mind their presence on the table at the meeting. The first Jewish woman, the baker, tried to mask the sense of disappointment she felt. To ensure that everyone was able to eat the offerings on the table, I

161 Following Tamar El-Or, I use this as an example of a “failure” that I made in my interactions with the group. The inclusion of a mistake on the part of the ethnographer is a convention employed to help overturn the power dynamic in the researcher-researched relationship. As can be seen here, I, the so-called ‘expert’ needed to turn to my informants for more exact information about halal practicalities. See Tamar El-Or, Next Year I Shall Know More, 59.

162 Interestingly enough, this never came up in the Community-based Group. I always made an effort to bring a strictly kosher snack to accommodate those who were more observant of kashrut, but most Jewish participants in those sessions tended to be “kosher by ingredients”, meaning as long as no prohibited foods were in the ingredient list, a kosher symbol was not necessary on the package for them to partake of the item.
suggested that I would continue to supply the snacks. I found a package of wafers that was both kosher and halal, and although the situation had been resolved, the damage had already been done to group relations.163

Group A met in the “Multi-Purpose Room” a small, but bright and open space adjacent to the Multi-faith Centre kitchen. The door of the room did not shut completely, so we often had to endure the sounds of people chatting noisily in the hallway. We also chose to sit on chairs in a circle, with a table off to the side, to create a sense of intimacy, but this may have also had other unforeseen impacts. The absence of the table was noted by Zahra in particular, who felt that, in comparison with the campus SR group with which she was simultaneously involved, the WBMA meetings seemed less “scholarly.” As she explained, “... when you have a table, and you have a text, I feel like you’re studying...[with WBMA] the space is different. You had the prayer room right next door.... There is a feeling that even though you’re studying scripture, there was space for all sorts of other feelings to take hold.”164 Nevertheless, despite my assessment of Group A as less successful than the Community-based group, Yasmin who participated in both Multi-faith Group sessions noted that the women of Group A were “more confident...less exploring” than the women of Group B. And as noted above, the members of Group A were certainly astute and incisive in their readings of texts.

**Group B: Free Food as Incentive**

Group B meetings, by contrast, were held in a small meeting room with a table, and I noted that participants frequently took out pens to circle words or jot down questions and other notes on their text packets. Attendance among Jewish women was consistently regular, but we did have one meeting where not a single Muslim woman attended, so we were unable to look at Islamic texts. Hafsa attended as regularly as she could, but her shyness about her facility with English at the time made her a less vocal participant even when she was present. Two of the participants commented that the free pizza lunch which I provided was a welcome addition, but Rebecca found it to be a distraction. She acknowledged that food enabled “the schmoozing and having the relationships and getting to know each other,” but she also felt that “we did spend a good deal of

163 Field notes, 11 February 2009.
164 Interview with Zahra. 12 May 2009.
time on the food which meant we had less time for the text-study...And just thinking what the food was and how food is such a big issue for both Jews and Muslims, it’s a thing...but then I’m really hungry, so I ate 4 pieces and then [noticing] other people didn’t eat.  

She also noted that the food made her instantly aware that there was an Orthodox woman present, since she watched her leave the room to wash her hands and then mumble a blessing to herself before tearing off and eating a small piece of crust so that she could speak.  

So as Rebecca astutely noted, the food both enables the dialogue, since people are sharing a meal together, but it also makes transparent the authority structures, strictures, and different levels of observance between community members. While food was supposed to create a shared experience for the group, it also instantly highlighted difference. Nonetheless, this sense of difference felt far less pronounced in Group B, and probably guaranteed attendance to some extent, since as Abigail put it, “I figured, why not go. There was going to be free food.”

Digressions as Characteristic of the Discussion

In all the groups, it was not unusual for the conversation to wander far off topic, as terms, concepts and beliefs in each tradition often needed to be explained to render a small passage meaningful across traditions. A small example will illustrate the necessity of digressions in our discussions. In Group A, our first discussion of Beruriah which examined the earliest reference to her in the Tosefta sounded like this:

Mona: Here in the Tosefta, Beruriah appears as a Rabbi. She is giving a ruling.

SG: Exactly, but she doesn’t have the title rabbi. We see Rabbi Tarfon and Rabbi Joshua, but she is just identified as Beruriah...Another move scholars often make is to say, “oh, that isn’t a woman, it is really a man.” But I don’t think anyone has ever tried to do that here. It is very clear this a woman.

Lejla: Can women be rabbis?

165 Interview with Rebecca, 14 September 2011.

166 Orthodox Jewish practice dictates that one’s hands need to be ritually washed before partaking of bread. To preserve a sense of continuity and ensure that there are no interruptions between the recitation of blessings and the activities to which they pertain (hand washing and bread eating), Orthodoxy requires that one not talk between these activities. So from the moment one washes one’s hands, to the moment one eats a piece of bread, other than the recitation of the blessings, no talking is permitted.

167 Interview with Abigail. 17 January 2012.
SG: Today, yes. In certain streams of Judaism. The Reform movement was the first to ordain women. Then the Conservative movement. Even in some streams of Orthodoxy, women are given ordination, but it is very controversial. Orthodoxy is holding out. But my sense is it will happen eventually.

Ariel: Not in Ultra-Orthodoxy.

SG: No.

Mona: Could Beruriah be a word to connote female rabbi? What is the etymology of the word?

This then led into a discussion of the possible meanings of the name, and other similarly named women, such as Buraira, a slave mentioned in the Hadith, who Mona tells the group was also very knowledgeable. Ariel then brings us back to the text, noticing that Beruriah’s ruling goes against what the Sages initially suggested.168

Sometimes these digressions were necessitated by a confusion of terms. In one of the earliest meetings of the Community-based Group we were looking at a short mishnaic text on marriage laws, but I first had to explain the function and history of the Mishnah. In order to do so, I went into a brief history about the Jewish sects at the time of the Second Temple and explained that the Sadducees were associated with the priestly class. This prompted a question from one of the Muslim women, “Wait – you have priests in Judaism? I thought you had rabbis!”169 That exchange prompted me to assemble a short “textual primer” with background on each of the major texts in both traditions, which I would hand out in advance via e-mail to any new participants. While we still wandered far off topic in our discussions, it did allow me to spend more time on the texts before us and less time on their history.

At the same time, I did occasionally allow the conversation to wander off topic because it was clear that this was part of the way that the women were getting to know one another, so that we could have an open discussion of the sources. But it worked in reverse as well – a pre-existing intimacy frequently led to more digressions and people felt more compelled to share personal stories and anecdotes. Indeed, while the two Multi-faith Centre groups frequently involved

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168 Taped session on Beruriah and ‘A’isha texts, 17 Feb 2009.
digressions, they were far more rampant in the Community-based Group. A description of the Community-based Group’s discussion of circumcision is instructive here. I began the session by asking if – aside from circumcision – there were other religious and cultural traditions primarily designed for men from which the women felt excluded. Our introductory conversation went on for twenty-three minutes and people discussed everything from being an imam, to imam qualifications, to dancing among Jewish males at Jewish weddings, the differences between the perceived importance of circumcision ceremonies for boys as compared to baby namings for girls, to men’s participation in cooking and cleaning, to ‘beat-boxing’, a form of vocal percussion, among men vs. women. So we covered a lot of ground about people’s personal experiences of lived Judaism and Islam as well as other cultural oddities not specific to Judaism or Islam before even broaching the texts. Admittedly, perhaps the fact that we were a) a group of women who had all met numerous times before,\textsuperscript{170} and b) we were discussing a ritual pertaining to the male generative organ,\textsuperscript{171} contributed to an atmosphere where there was much more laughter and more bawdy jokes than were commonplace at most other meetings.\textsuperscript{172} Nonetheless, the textual discussion was comparable to others in terms of its rigorousness. The women explored the connections in the texts between covenant and inheritance, women and covenant, circumcision and fertility, circumcision and hygiene, circumcision and male pleasure, and views of sexuality in Judaism and Islam. But again, mid-way through our discussion of a passage from Maimonides’ \textit{Guide for the Perplexed}, which explicitly describes circumcision as painful, those of us in the group with sons or younger brothers shared our own memories of and conflicted feelings about the circumcision ritual, before returning to the texts.\textsuperscript{173} This snapshot of one Community-based Group meeting seems to personify Zahra’s aforementioned observation

\textsuperscript{170} This meeting included Mona, her daughter, Petra, Sophie, and Orli. Mona asked if she could attend this meeting of the Community-based Group because the topic was of particular interest to her.

\textsuperscript{171} This is a weird and ironic twist on the aforementioned “locker room” talk which Hauptman describes Talmudic sages as being engaged in when the rabbis discuss how one’s sexual prowess can guarantee male offspring. See Chapter 3, 23 and Judith Hauptman, \textit{Rereading the Rabbis}, 163. While males are frequently the ones discussing female body parts and their connotations in Jewish and Islamic legal texts, on this occasion, we were women exploring the laws and connotations pertaining to male body parts.

\textsuperscript{172} See my comments above and in Chapter 4 on Rachel Adler’s “hermeneutics of laughter” that comes from ‘eavesdropping’ on texts which never assumed a female audience. See \textit{Engendering Judaism}, 16-17.

that in WBMA meetings in general, there was “space for all sorts of other feelings to take hold” around the presence of the texts. This is consistent with the findings of anthropologist Samuel Heilman who studied groups of Jewish American and Israeli males participating in lernen, traditional Talmud study undertaken as a leisure activity. As he notes, “while the members of study group I observed ostensibly gathered in houses of study to get the wisdom of Judaism from the books into their minds, they often spent more time getting their feelings about Judaism off their chests. Clearly, much more than learning or the accumulation of information about Jewish texts was going on.”

Politeness

Nonetheless, despite this group intimacy, many women, particularly in the Multi-faith Centre groups, expressed concern about a sense of falseness or superficiality in our discussions. Rebecca thought this was a necessary evil that the texts themselves may have facilitated. The fact that the texts under discussion were perceived as sacred contributed to “a level of courtesy and respect. Which in some ways is a good thing to start with. Politeness is fake and that is somewhat of a hindrance, but you need that for the first while.”

Abigail thought that gender may have been the primary ingredient that kept our conversations at a low-level simmer. As she explains,

I think the problem for me was that women have a tendency – maybe no one wants to get into an argument, and no one wants to be contesting anyone else’s points, so I feel like a lot of the time, we had very superficial discussions, like this thing is different in this way, as opposed to really getting into anything that might be contentious. Which isn’t to say that I wanted people to be yelling at one another, but I feel like there are things that we didn’t explore as much as we could have...Men and also Christians are brought up to be more assertive... if you grow up as traditional in a Jewish or Muslim home, you’re taught a certain attitude towards men and towards the text and towards tradition.

For Nuria though, issues of perceived authority and authenticity – the question of ‘who gets to speak for Islam’ – often led her to censor herself. She acknowledged,

It’s funny, when there are other Muslims around, I am very careful about what I say and how I frame things. I am just aware that they know more or may be judging more

175 Interview with Rebecca. 14 September 2011.
176 Interview with Abigail. 17 January 2010.
critically, or whatever.... I remember at one point, I was talking about Abu Hurayra and I was aware that there was one girl in the group who looked shocked, that she had never been exposed before to that viewpoint and I remember kicking myself afterwards, maybe I should have provided more context because she doesn’t know me like this or knows me in a different sphere, and she’s probably really confused now... And then sometimes you hear other Muslims say things and you just say, well, I wish they hadn’t said that, or I really disagree with that. But I didn’t want to come out and say, “I really disagree”, because they might feel intimidated and think that they can’t express themselves again.\footnote{Interview with Nuria. 27 August 2011.}

Still, this politeness issue may simply be a factor of group discussions in general. As Morgan points out,

> The question of how interacting in a group influences what each individual will contribute to the group is a classic issue in social psychology...The concerns for focus groups include both a tendency towards conformity, in which some participants withhold things they might say in private, and a tendency towards “polarization”, in which some participants express more extreme views in a group than in private.\footnote{Morgan, Focus Groups as Qualitative Research, 15.}

Notably, these comments all came from women who were involved in the Multi-faith Centre Groups, which had a total of five meetings each. Nonetheless, it seems clear that there are multiple factors involved in group dynamics which could have all in some way influenced the depth, rigorousness and candour of the discussions that we had.

**Insider/ Outsider: My Role as Ethnographer**

Another factor which obviously had an impact on the group dynamics overall was my own involvement. Indeed, my role as moderator was also complicated because at times, I similarly saw myself as a group participant. As previously suggested, I had a rule that I would not read the texts of a tradition if there were no participants representing that tradition in the room. However, although there was never an instance where no Jewish women were in attendance, if the group had consisted of only Muslim women and myself, I would not have hesitated to proceed with Torah and Talmudic texts. I also began each session by asking a more personal question of the group, which allowed everyone to speak about their own experiences. The question was often somewhat related to the topic under discussion, so for instance, if we were looking at texts on Beruriah and ‘A’isha, I would ask participants to tell the group about a Jewish or Muslim woman...
who serves as a role model for them. We would go around in a circle and the idea was to enable each woman present to speak at least once, so that even if someone was timid about weighing in on the textual discussion, we could have her voice as part of the discussion from the beginning. Since I was the one who posed the discussion question, I always went first, mostly to break the ice, but also to model for everyone that the answer need not be something high-brow or well-rehearsed, but that we wanted to hear from them as laywomen in their traditions. However, since I answered this question and shared something of myself like any other participant, I did, for at least a few moments, function in a slightly different capacity. Admittedly, the women of the group may not have seen it that way. Certainly, the presence of my tape recorder, my role as teacher/expert along with my choosing and distributing of the texts and consent forms clearly demarcated me as something other than ‘average’ participant.

**The Politics of Location: The (Shifting) Markers of Language and Locale**

But while I was clearly more researcher than participant, there was another dimension to this insider/outsider paradigm that, as already hinted at, arose because of my own faith affiliations. My position as an insider with regard to one tradition and an outsider with regard to the other had an interesting impact on the group sessions and the interview process in particular. It manifested itself most clearly around language use. Notably, two of the Muslim women, Lelja and Yasmin, liberally utilized Arabic and emic terms for Islamic practices and concepts in our discussions, and seemed to take for granted that my knowledge of Islam was quite thorough, again perhaps of their perception of my role as researcher/academic studying Islam. In my discussions with them, while I was clearly not a Muslim insider, I was regarded at the very least as having Muslim ‘street cred’, if you will. However, in stark contrast, Mona and Nuria, both of whom are in academia and often speak publicly, would translate or explain Arabic/Islamic terms and ideas after introducing them. For instance, Nuria at one point explaining the daily schedule at her Islamic elementary school said, “And then we would have *salat*, our prayer”. At another point in the discussion she mentioned an influx of Salafis at her father’s mosque, and as an aside said, “I don’t know if you know Salafis.” “Of course,” I responded, but her question actually stopped

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179 These included the use of *fajr* to denote early morning prayers, hijabis which is popularly used among Anglo-Muslims to connote women who wear hijab, and a reference to *al-thaqalayn* (the “two weighty things”), which is the name of the Shi’i student association, but which derives from a hadith that alludes to the equal importance of the Prophet’s family along with the Qur’an. See Interviews with Lejla and Yasmin.
me from clarifying her use of the term, and from getting at the particular configuration of Salafis that had suddenly become an active presence in the mosque. Mona, who has worked with me on numerous interfaith scripture workshops and was very familiar with the focus of my own work also translated when describing the nature of Islamic studies at her elementary school while growing up in Cairo, “We’d be learning Qur’an, hadith, sirah – that’s the biography of the Prophet. Maybe a little bit of fiqh, jurisprudence.” Later in the interview she explained to me that there are no women imams in Islam.\(^\text{180}\) I thought to myself, surely she knows that I am aware of that fact! I wondered if Mona’s and Nuria’s need to translate and explain came out of habit, as women who frequently teach and speak to non-Muslims and Muslims who are less knowledgeable than they are. However, I also wondered if their embedded translations arose just as much out of a lack of confidence on their part about my own proficiency with and knowledge of the Islamic tradition. In most of the interviews with Muslim women, usually towards the end of our discussions, I often explained how my own learning curve when it came to Islam has been steep, almost by way of apology for anything that might seem like a gap in my knowledge. Although I am by no means an expert on absolutely everything Jewish, at no point did I ever feel a need to apologize or explain myself in this way to the Jewish women.

My insider status when it came to the Jewish women resulted in most women assuming that I knew precisely what they were talking about when they used Hebrew, Yiddish, or other Jewish jargon, or even mentioned institutions or Jewish scholars and other important Jewish leaders in their fields. This became a disadvantage when I similarly was negligent in clarifying what a person meant by the term she was using. For instance, Tamara mentioned that her synagogue in Maine was “Jewish Renewal-y”. Although I am acquainted with the philosophy of the Jewish Renewal movement, I failed to probe further and find out just what this meant in terms of her

\(^{180}\) In a Sunni context, imam simply means ‘prayer leader’, although the term can also connote leaders of congregations and formal experts in the religious sciences of Hadith and fiqh. Although Muslim women’s roles vis-à-vis the leading of prayer are certainly changing, there are arguably to date, no recognized female ‘imams’ per se. Even in China, which for centuries has had women-only mosques, or nusi, presided over by female imams known as Nu ahong, they are often not regarded as true imams by their male counterparts. See Maria Jaschok and Jingjun Shui, “A Mosque of Their Own: Muslim Women, Chinese Islam and Sexual Equality” in The History of Women’s Mosques in China (Surrey, UK: Curzon Press, 2000), 3-31. For more on the current state of women as imams, see Juliane Hammer, American Muslim Women, Religious Authority and Activism: More Than a Prayer (Austin, TX: University of Texas Press, 2012); and Laury Silvers and Ahmed Elewa, “‘I Am One of the People’: A Survey and Analysis of Legal Arguments on Women-Led Prayer in Islam” in Journal of Law and Religion 26, 1 (2010) ;http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1597330 (accessed 10 Jan 2012).
synagogue’s mandate and practices. Ironically, the one person who did explain the nature and significance of every person and institution with which she was affiliated was my friend Sophie, who was given instructions to answer my questions – as much as possible – as if she did not know me. Having gone to a Toronto Jewish day school myself, I asked the Jewish women for far fewer details about daily schedules and curriculum than I did from the Muslim women who also attended Toronto-based day school programs. While Tamara and Abigail, two of the Jewish women, were from the U.S., and grew up in cities and towns that I have never visited, I still felt that my knowledge of contemporary expressions of American Judaism were sufficient for me to ask appropriate questions about their upbringing. On the other hand, I felt I was on surer ground when asking about Mona’s and Zahra’s educational experiences in Egypt, since I myself have visited Egypt and am well-versed in contemporary Middle Eastern politics, than when I was asking Hafsa or Yasmin about their respective childhoods in Malaysia or Nairobi, Kenya. These places seemed quite far from my own experiences, and I felt less equipped to make the right inquiries.

Anti-Jewish/Anti-Muslim Sentiments

However, my insider/outsider status may also have contributed to some interesting disclosures relating to anti-Jewish and anti-Muslim biases in the one-on-one interviews. Although an in-depth analysis of these is beyond the scope of my discussion here, when it came to women’s revelations of these experiences, being perceived as an outsider in relation to the Muslim women seemed to have some clear advantages. Indeed my status not only as a non-Muslim, but as a Jewish woman, a sort of ambassador for my tradition, may have allowed some of the Muslim women to share their experiences with anti-Jewish rhetoric more freely than had I been a researcher of another religious background. Without any prompting from me, Nuria, Lejla, Petra and Joanna all discussed these experiences at length and how disturbed they were by these frequently aired prejudices in their communities.

Petra was particularly sensitive to these comments, having grown up in Germany, guilt-wracked over her country’s historical treatment of Jews. As she explains, “I hear Anti-semitism. Even things that people don’t think is Anti-semitic. I have learned to be sensitive about it and other

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181 On my pre-existing friendship with Sophie, see ‘Ethnographic Appendix’, 3, note 1.
people haven’t. But even taking that into consideration, there is something to it. There is a tone.” She went on to describe a particularly disappointing incident when she encountered some women she knew while on her way to one of our meetings and invited them to join us. Their response was, “We are not talking with Jews.” Nuria’s experiences echoed Petra’s. As she explains, “There is a reluctance, particularly when I speak to Arab Muslims, to engage with Jews. I think Indians, and other cultures are more interested, but with Arabs, there is a tension. Fear and hostility.” Several of the women were also candid about their fear/curiosity about Jews. In our many years of knowing one another, Petra and I had had many opportunities to discuss her interest in studying texts with Jewish women. When I asked her to revisit this topic in our interview, and explain “for the record” why she wanted to read with Jews specifically, she replied,

Petra: Because I’m German. And I’m scared of Jews, obviously. [We both laughed here]

SG: Scared how?

Petra: You don’t meet any Jews in Germany. And you hear about Jews. You have to grow up in that atmosphere. You have to go through thirteen years of school. Hearing about it, discussing it. And seeing those movies over and over again. And going to all those concentration camps... You’re German and you feel curiosity. I never ever met anybody Jewish in Germany....[And when I came to Toronto] all of a sudden [Jews are] wherever you look! And I thought, “Finally, an opportunity to meet somebody!”

I cannot say with certainty that Petra would not have made the same remarks to another Muslim or to a non-Jew, but there was a sense that this ‘confessional’ comment was facilitated by my being a member of the very group she had learned about and feared her entire life. Although

182 Interview with Petra, 21 July 2011.
183 Interview with Nuria. 27 Aug 2011. This particular tension pertaining to Jews and Arabs/Palestinians will be probed further below.
184 In some respects, I felt she was apologizing to me for Germany’s history. When she described the yearly assault of concentration camp visits she endured in her youth, I said, “Oy, I’m sorry!” And she countered with, “Are you crazy? Why on earth are you sorry?” It led to an interesting discussion about Holocaust education among children and how I similarly felt traumatized by the black and white photos of mass graves trekked out each year on Holocaust Remembrance Day during my Jewish day school years. In this instance, I must acknowledge that I cannot be sure if the comments were made because of my outsider status/non-Muslim/Jewish status or because of the friendship we have forged over the years. On the problematics of friendship with ethnographic informants, see Tamar-El Or, “Do you Really Know How They Make Love? The Limits on Intimacy with Ethnographic Informants” in Reflexivity and Voice, ed. R. Hertz. (Thousand Oaks, CA: Sage Publications,1997), 188.
the Muslim informants marked comments made by other people in their lives (teachers, fellow mosque-goers, acquaintances, etc.) as Anti-semitic, the women themselves did not directly express any biases or stereotypes about Jews, but this again, might have been different if they were speaking to someone they viewed as safe, as a Muslim insider. This sense of safety creating a forum for prejudices to be aired was certainly at play in my discussions with the Jewish participants.

Indeed, my insider status as a Jew served as a double-edged sword. On the one hand, it similarly created a space for at least two of the Jewish women to reflect upon and discuss candidly with me their fear of Muslims and some of the anti-Muslim sentiments with which they grew up. Rebecca remarked, “There is just so much rhetoric in the Jewish community against Islam and against the Qur’an and Muslims. A Jew reading the Qur’an is transgressive. There is something powerful about unplugging that fire alarm.”185 When I asked her if she would have come to a Jewish-Muslim group not based around text she candidly replied, “[the texts] made it more accessible, made it way less scary. [If it had been] a restaurant club, I would have gone, but I would have been terrified.” Talia likewise described the heightened challenge in studying texts with Muslim women more so than men, “There is an intimacy...I feel slightly like an imposter...I’m sitting in fear that I’m going to say something wrong. And I think with women, it is much more so. It is like sisters. You’re going to see that I don’t know anything about you, that I grew up in hatred of you.”186

At the same time, other Jewish participants seemed less aware of these ingrained biases in the communities in which they were raised. In a few instances, some of the younger Jewish participants even voiced prejudices about Islam and Muslims themselves. Comments included the suggestion that women who wear headscarves are “backward”, that Muslims are less open to interfaith dialogue, and that only a small and silent minority of Muslims are interested in peace. While mainstream media and other social institutions, both internal and external to the Jewish community, are rife with these ideologies, I did wonder if my identity as “fellow Jew” made

185 Interview with Rebecca. 14 September 2012.
186 Interview with Talia. 26 July 2012.
them feel that they could let their guard down and make these remarks, which they never did voice in our text-study sessions and would likely never have said out loud in the presence of Muslim women. In one instance, when one of the Jewish women suggested that Islam on the whole was “going through an awkward adolescence,” and was far behind Judaism and Christianity in many respects, I was so uncomfortable with where the conversation was going that I got visibly agitated. I lost all semblance of professionalism, along with my desire to listen to her. Instead, I found myself lecturing her, hoping to provide her with another perspective. The interviewee could see that I did not share her opinion and abruptly changed the subject to a more amenable topic. In this case, the insider/outsider dynamic got flipped, and although I was Jewish, my interlocutor undoubtedly left that exchange regarding me as a ‘Muslim apologist’. So clearly, this insider/outsider dynamic was complicated, reflecting the power dynamics at play between researcher and researched, as well as the problematics involved in studying one’s own community vs. an outsider community, when what it meant to be inside and outside was constantly shifting.

The Elephant

Still, the privately held fears expressed by several of the participants pointed to another very palpable, yet invisible facet of the interfaith dynamic. Indeed, despite the alliances and fledgling friendships that were formed across faith lines over the course of our meetings, and a shared sense of the complicated relationship that women have with traditional texts, participants could not shake their awareness of the elephant in the room: The Israeli-Palestinian conflict. While the conflict never directly came up in any of our sessions, it hovered over our meetings, like an unwelcome presence. Virtually every group participant acknowledged this in my one-on-one interviews with them. This was even recognized by those participants who initially contended that it was not a factor either in their decision to participate or in the meetings themselves.

Nuria readily acknowledged the role of the conflict, describing it as the lens through which participants viewed one another, “everyone is thinking about it and people do view each other through that lens. People do think okay what does this person think about the Israeli-Palestinian conflict and that does feed into how we view people. Are they hostile towards me because of that
situation?" She suggested that talking to people about other subjects was useful in helping to make people more comfortable, to allow the conflict to become background instead of foreground. Sophie agreed that the conflict was omni-present, but that the focus on other topics highlighted similarity rather than difference,

...it wasn’t the elephant in the room, but I wouldn’t say that it wasn’t there. I think it is always there. I think we have this smug air like, we are so above it. But it is there. It is still there... So even though I say it is not a political group, I think it is still an act of peace...Even though we don’t talk about it, I think it is still an act of reconciliation and brotherhood building and what I always walk away with, and I think we all do, is just how many similarities there are...there is so much common ground and that is what you walk away with, that is the predominate feeling, not how different we are but how similar we are.188

Joanna also recognized the group as a vehicle for reconciliation, suggesting that having ‘Israel’ come up as country where Jewish law was applied, rather than as a military occupation, was both refreshing and enlightening. Even before I could ask about the role of the conflict, she acknowledged it as part of her reasoning for joining the group,

I also thought there is so much hostility between certain Jews and Muslims that it is just a really important thing to do. And I had studied and done some work and advocacy around Israel/Palestine issues, and realized how important that conflict is and how much needs to be done in terms of building bridges and understanding. And the group is obviously not a political group and it wasn’t meant to discuss that... I don’t think the issue of Israel/Palestine came up, but I remember – and I don’t think it was supposed to come up because it is difficult to talk about but even just hearing sometimes, some people in the group might tell stories about having visited Israel or would say, “in Israel, this is the way the law is.” So it helps to contextualize and you realize that Israel isn’t this anonymous thing like we talk about the United States as if it’s a thing or person, but it’s actually a society of diverse people and has a lot of different aspects to it, including laws, and has its own internal controversies and struggles and so it helps to personalize it a bit more and realize it is not this amorphous thing, something that needs to be appreciated for its complexity like any community or society. So that does help and it’s something you know but it doesn’t quite hit you until someone starts talking about having been to Israel or lived there...189

Many of the Jewish women expressed a trepidation that the topic would come up in our discussions and were grateful that it did not. Like Joanna, Ariel and Tamara expressed the

187 Interview with Nuria. 27 Aug 2011.
188 Interview with Sophie, June 12, 2012.
189 Interview with Joanna. 5 June 2009.
difficulty in talking about the conflict in a reasoned and dispassionate way, with comments such as “It’s not even much of a discussion anymore, it’s more of a screaming match now” and “I don’t think people want to be screaming at each other. Even though I don’t really know what my feelings are, I know they are very strong.”

Several of the women wondered if the topic would have come up more overtly if there had been more Israeli or Palestinian women who had attended the meetings.\textsuperscript{190} The conversation did veer in the direction of the conflict once in Group A at the Multi-faith Centre when Ariel mentioned that our session was coinciding with Yom Ha-Shoah, Holocaust Remembrance Day, which is marked as a national day of mourning in Israel. In my conversation with Zahra about the ‘elephant’ she noted, “Spoken or unspoken, there’s something there. Like the last session was – what holiday? And I’m like – oh, I have questions about that, but I don’t know if I want to do that because I’m here to talk about scripture.”\textsuperscript{191}

The one time where the topic very clearly emerged was in my initial focus group meeting which involved only Jewish women. One participant likened us to ‘halutzim’ the Hebrew word for pioneers, generally used to describe early Zionist settlers in pre-state Palestine. Although she intended to use the word rather innocently, to indicate that such a meeting of Jewish and Muslim women was unprecedented, another woman in the group who was a very vocal left-leaning political activist took exception to the use of this term and disarmed everyone by insisting that if she was going to feel comfortable in the group, she needed to know each of the participants’ positions on Middle Eastern politics. I told her that the point of the meetings was to explore sacred texts, that there were numerous other forums to discuss Israel/Palestine issues, and that she could not compel anyone to share their political opinions. But to say that that first meeting was extremely tense would be an understatement. The political activist would self-select not to participate in further meetings, as her admitted interests lay in political dialogue more so than textual interpretation. But the incident is revealing, as points of tension between members of the same religious tradition arose more frequently than between Jewish and Muslim participants.

\textsuperscript{190} Two Israelis would attend different groups at different times, but each of them never participated in more than one meeting. One Palestinian woman also attended a session of the Community-based Group, but she also never returned.

\textsuperscript{191} Interview with Zahra. 30 April 2009.
Both Petra and Nuria mentioned at times feeling irritated by comments made by other Muslims. “I wish she hadn’t said that” we saw Nuria comment above, and Petra was similarly vexed by the interpretations of fellow Muslims, often thinking, “come on, what are you talking about?” when people shared their different perspectives on the text and on praxis.

Restrictions, Leniencies and Configurations of Religious Observance
Despite these inter-religious and intra-communal dynamics, as we have already suggested, participants seemed to embrace the experience of reading together, intuitively applying similar textual strategies to the readings of both familiar and less familiar texts. Additionally, the shared readings of scriptures across textual traditions also brought into sharper focus the participants’ relationships with the law and their different conceptions of their own tradition. As noted above, Yasmin was struck by the difference between Judaism and Islam when it came to menstruating women and sacred texts. The fact that, strictly speaking, there were no prohibitions for Jewish women to pray or read Torah during their period was surprising to her.192 Natalie, on the other hand, was envious of the leniency in Islam around physical contact during menstruation,

I really loved our discussion on menstruation. You can touch a woman and you can sleep in the same bed.193 You can kiss. That’s interesting that you can’t pray.... I think it’s super interesting. Compare that to an atheist who says this is all stupid. Here I have someone saying – there is something, but it’s just different. I’d rather be able to touch someone, but not be sexual as opposed to not touching [at all]...194

For Natalie who was already struggling with the role of halakha in her life, this less restrictive approach was appealing. But as it also becomes clear, she was not simply suggesting that all the limitations should be tossed aside. She liked that this perspective was not coming from “an atheist who says this is all stupid.” However, as she examined the allowances for menstruants in Islam, she could not help but turn the lens back on herself, and re-evaluate her own position.

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192 The fact that halakhically there are no restrictions on Jewish menstruants and prayer does not mean that there were not popular customs in many communities which barred women from synagogues. See Shaye Cohen, “Menstruants and the Sacred in Judaism and Christianity” in The Significance of Yavneh and Other in Essays in Jewish Hellenism (Tubingen, Germany: Mohr Siebeck, 2010), 393-415.

193 Orthodox couples often sleep in separate beds for the duration of a woman’s period, plus an additional seven ‘clean’ days, before resuming sexual relations.

194 Interview with Natalie. 21 January 2010.
regarding the menstrual taboo in Judaism and whether or not this was something by which she could abide.

Indeed, one person’s restriction is another person’s leniency. While several of the Muslim women expressed angst over exclusions from prayer and fasting during their period, it did not necessarily register as a disadvantage in the eyes of most of the Jewish participants. Rachel, who was once an ardent practitioner of family purity laws in Judaism, also vividly recalled hearing about “what a woman would do during Ramadan, and that she didn’t have to fast if she had her period.”\footnote{Interview with Rachel, 28 July 2011.} To Rachel, this sounded like a benefit, rather than a restriction. While Jewish practice does make allowances for those who are sick when it comes to compulsory fasts, neither menstruating women, nor pregnant women are exempt per se.\footnote{See Shulhan Arukh, Orach Chaim 549, 541:1, 554:3 & 5; b. Pes. 54b.}

This question of who was better or worse off would come up again for both Jewish and Muslim women when the topic of dietary restrictions was on the table. As Rachel noted, “Of course I knew Muslims didn’t drink alcohol, but that they were neurotic as us? Well, of course we are more neurotic when it comes to dietary laws, but that things like white wine vinegar could be an issue!”\footnote{Interview with Rachel. 28 July 2011.} This question of ‘who was more neurotic’, and who was more ‘religious’ was clearly a sliding scale. Ariel shared Natalie’s enviousness regarding Islamic approaches to food, but again, it occasioned an opportunity for her to reflect on her own kosher praxis,

\begin{quote}
I found it really interesting. How similar and yet how different the laws are. And how flexible the design was. I was kind of jealous, like at least you can have meat and milk! I don’t even get that law because it comes from a ridiculous source. I have problems with milk and meat for that reason. But I keep kosher strictly. I very rarely have meat so it’s not much of an issue.\footnote{Interview with Ariel. 16 Aug 2011.}
\end{quote}

Despite this sense that dietary laws in Islam were more flexible, Ariel noted that she felt the Muslim women in the group were “probably a little more religious than I am in my Judaism.” When I asked her why she had that impression, she remarked, “I don’t know. I don’t know, maybe it’s because the gender roles are defined a little more sharply.” This response was
fascinating, given everything Ariel herself said about her lack of access in her synagogue and the very set roles granted to her friend, the rabbi’s daughter.  

Ironically enough, Ariel’s religiosity was what caused Zahra to query the nature of her own relationship with traditional dietary practices in Islam. Zahra indicated that our discussion of dietary laws had a profound impact on her, leading her to rethink her own praxis. As she explained,

I think you know how surprising I found the dietary restrictions because I thought they were much more similar. I’m thinking about it every day now. I actually went home that night and thought I need to consider eating red meat... I also realized that I grew up feeling like Islam was really a part of my life, but it’s not until I come to group like that that I realize actually my family isn’t very traditional, but we think of ourselves as traditional...My parents have never even questioned eating non-halal meat...

When I asked whether it was being confronted with other Muslims or other Jews that made her realize this she replied,

Both. Particularly the Jews, I think. With Ariel, she really needs to think every time she wants to put something in her mouth and I think that’s great. Not that I think of everything in terms of good or bad. But I think it’s fascinating, because I really do think we should be thinking more about what we eat. But with Yasmin and other Muslims too, and the whole thing with shellfish. [Yasmin in our session had indicated that shellfish was prohibited in Islam] ....I feel very naive, but we never questioned it. I remember one girl when I was growing up, came into our home and we were serving shrimp, and she told us it was haram. We thought she was just misguided. She doesn’t know what she’s talking about. So arrogant, right? 

Encountering Muslims and non-Muslims you are made aware of who you are and what your faith looks like...

Indeed, as Zahra suggested, reading texts across faith traditions acts as a sort of mirror for practitioners to more clearly examine their own taken-for-granted observances and hold them up to a critical lens. To be clear though, it is not that texts and practices from another tradition

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199 See page 293-294 above.
200 Our session had involved a discussion about the ethics of *shchita* and *zabiha*, ritual slaughter in Judaism and Islam.
201 Interview with Zahra. 30 April 2009.
202 Shellfish is permitted according to the Hanbalis, Shafi’is, and Malikis, but it is haram according to the Hanafis. See Ibn Rushd, *The Distinguished Jurist’s Primer*, 571-572.
203 Interview with Zahra. 30 April 2009.
make them less secure in the understanding of their own tradition, but rather it helps to recalibrate their relationship with these texts and adds another filter through which to understand the role of religious law in one’s life. Just as a gendered and feminist analysis of texts makes them rethink how halakha and fiqh will shape their lives as practicing Jews and Muslims, the interfaith analysis also provides a further layer through which they can query praxis, traditional midrash and tafsīr, and religious authority. But the fact that these women are engaging with a tradition in which law has a similarly revered status makes it a ‘safe’ and rich environment to explore these ideas. As Natalie astutely noted, no one in the room is just going to throw up their hands and say “this is stupid”.

**Conclusion**

Indeed, unlike Shaikh and Plaskow, who try to skirt the topic of fiqh and halakha, the women of this study actively continued to grapple with the role of religious law in their lives, and their willingness to question traditional interpretations was, as we observed, predicated on many factors, including textual confidence, which was, in turn affected by communal supports, educational background, and readings of academic/scholarly/intellectual texts. Interestingly enough, the women of this study seem less concerned by the incoherent and inconsistent “grab bag of practices” so maligned by Rachel Adler.²⁰⁴ By contrast, they are more inclined to incorporate into their daily lives only the practices that they each deem to be reasonable – in line with the ‘spirit’ of the tradition – based on their own readings of the sources. Nonetheless, they would agree with Adler that it is unsustainable to “split off our religious lives from our secular lives and live two separate existences with two different sets of values and commitments.”²⁰⁵ Longing for a communal praxis that embodies contemporary ethics, including feminist and egalitarian values, these women adopt and adapt traditional practices based on their own empowered understanding of the texts that serve as the foundation of their faiths. Despite or perhaps because of the historical exclusion of women from the study and interpretation of

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²⁰⁴ See Chapter 4, 14; Adler, *Engendering Judaism*, 26. Adler here is critiquing the picking and choosing of which traditions to uphold purely based on personal preference, rather than adhering to an integrated praxis based in communal values.

classical texts, they now claim their right to read these sources and are willing to skillfully challenge anyone who disputes their alternative and textually confident readings.
Conclusion: The Utility of Comparison

Although many contemporary universities encourage the ‘comparative’ study of religion, there are several obstacles involved in undertaking the study of more than one religious system, of understanding the complexity of each, and their manifold representations, without devolving into caricature. Steven Hopkins, a Professor of Religion at Swarthmore College, has captured some of the challenges involved in such an endeavour,

...religious studies demands a careful cultivation of what might be termed a "double identity." The scholar of comparative religion is called to constantly hold together the poles of specialization (i.e. language and area studies) as well as general cross-cultural comparative study. Not only must we know our languages well enough to do primary research, and in some cases read original texts with our students, but we must also have an in-depth knowledge of at least one or two other religious traditions, as well as a grasp of the general methodological issues in cross-cultural studies.¹

To manage the delicate balance of respecting difference and honouring specificity without losing sight of a broader commonality in human experiences, Hopkins advocates the teaching of theory and doctrine alongside practice in his Comparative Religion courses.² For lived experiences of religious traditions often complicate our understandings of religious precepts and religious texts and vice versa.

But such an approach is not always commonplace. While a few articles and books in the fields of Jewish Studies or Islamic Studies have compared a variety of feminist approaches to classical religious texts,³ and a handful of articles have examined feminist hermeneutics across the

² Idem.
³ For a survey of feminist approaches to Biblical texts, see Adele Reinhartz, “Jewish Women’s Biblical Scholarship” in The Jewish Study Bible, eds. Adele Berlin and Marc Zvi Brettler (New York: Oxford University Press, 2004), 2005; for a survey of feminist work in the field of rabbinics, see See Tal Ilan, Mine and Yours are Hers: Retrieving Women’s History from Rabbinic Literature. (Leiden: Brill, 1997); for a comparison of Muslim women’s approaches to the Qur’an, see Julianne Hammer, “Identity, Authority, and Activism: American Muslim Women Approach the Qur’an” in The Muslim World 98 (2008): 451-452; and for a comparison of feminist work in Islamic Studies more generally see, Raja Rhouni, “Conclusion: Toward a Post-Foundationalist Islamic Feminism” in Secular and Islamic Feminist Critiques in the Work of Fatima Mernissi (Leiden: Brill, 2010).
Abrahamic traditions, to the best of my knowledge, no work has done an in-depth comparison of the strategies that Jewish and Muslim women are using in their readings of scripture and their conceptions of law. Similarly, while a few ethnographic studies have explored the experiences of either Jewish or Muslim women with traditional scripture study in the Middle East, until now, no work has either compared these encounters or examined the shared experiences of Jewish and Muslim women reading these texts together in a North American context. But as this study hopefully illustrates, this type of comparative work has far-reaching academic and socio-cultural value for women living as part of minority communities in social-liberal democracies.

In a similar vein to the methods advocated by Hopkins above, and in order to overcome the enormous challenges in adequately analyzing more than one tradition, this study has made use of both literary analyses as well as ethnography in order to compare the experiences of Jewish and Muslim women with classical religious texts. By using these two different approaches, this study has illustrated that despite their differences, Jewish and Muslim women, whether they are scholars or lay practitioners, tend to experience religious texts, laws and authority in similar ways. My findings have significance for Jewish and Islamic Studies, comparative legal theory, feminist theory and literacy studies, but also contribute to the study of religion more broadly by challenging some of our more conventional notions of religious law, ritual theory, religious identity, and feminist discourse. And I believe that it is the comparative frame, in part, which helps to bring these new insights to the fore.

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4 For an example of comparative work across all three Abraham traditions, see Victoria S. Harrison, “Modern Women, Traditional Abrahamic Religions and Interpreting Sacred Texts” in Feminist Theology 15, 2 (2007): 145-159. A 2011 piece co-authored by veteran theologian Judith Plaskow and emerging scholar Aysha Hidaayatullah begins a comparison of feminist approaches in both Judaism and Islam, but the article is really a series of short correspondences between the two scholars and is a rather superficial treatment of exegesis in both traditions. Still, it is encouraging to see that this long-overdue discussion is finally gaining currency in academia. See Judith Plaskow and Aysha Hidayatullah, “Beyond Sarah and Hagar: Jewish and Muslim Reflections on Feminist Theology” in Muslims and Jews in America: Commonalities, Contentions, and Complexities, eds Reza Aslan and Aaran J. Hahn Tapper (New York: Palgrave Macmillan, 2011), 159-172.

Academic Implications: Jewish and Islamic Studies

As already noted, while Muslim and Jewish women academics are often working with similar types of resources and parallel, if not identical, types of legal issues – specifically in the areas of marriage, divorce, inheritance, witnessing, modesty, public leadership, and menstrual taboos – it is strangely rare to see them citing from one another’s work, or borrowing theoretical approaches from one another. This is striking, given that Jewish feminists easily borrowed from and adapted techniques used by their Christian counterparts, in the early days of Jewish feminist scholarship, as was already noted in Chapter 2. In fact, since it was the primacy of the law in Judaism which served as an obstacle in wholesale application by Jewish feminists of the approaches of Christian feminists, it would seem that a Jewish-Muslim exchange of scholarly approaches would be more easily comparable. I do not mean to suggest that Jewish and Muslim women text scholars should be looking for over-simplified commonalities between texts and legal systems produced, interpreted and enacted in different historic, socio-cultural and geographic milieus. However, it seems to me that, at the very least, a greater exploration of one another’s exegetical moves could result in more innovative re-readings of problematic texts and contribute to richer, more sophisticated scholarship in both Jewish and Islamic Studies. In Chapters 2, 3 and 4, we noted the richness that various types of feminist theories have brought to the study of the classical Jewish and Islamic texts more generally, and in Chapter 5, we suggested that both a feminist lens and an interfaith lens were useful in shifting Jewish and Muslim laywomen’s thinking about these texts and their relationship with traditional praxis. In a similar vein, it seems that a borrowing of theory from a related discipline in Religious Studies would only enhance the work that Jewish and Muslim women academics are already doing. But what has the comparative frame undergirding this study already brought to light in terms of the existing techniques being used by Jewish and Muslim women who study religious texts? Are some of the differences in hermeneutical approaches so vast as to make a transfer of methods and theory across faith and disciplinary lines impossible?

6 There are some exceptions, even among the women academics profiled in this study, but it is remarkably infrequent given the subjects of shared concern. Tamar Ross cites the work of Riffat Hasan, Leila Ahmed and Aziza al-Hibri in Expanding the Palace of Torah, 104, 108, 280; Asma Barlas cites the work of Orthodox feminist Judith Antonelli, in Believing Women, 56, 214; and Kecia Ali cites the work of Judith Plaskow, in Sexual Ethics, xvii, 18, 159, 187,192.

Strategies for Engagement with Religious Texts: Similarities and Differences

To review, Chapters 2, 3 and 4 noted some general differences and similarities between the hermeneutical approaches of Jewish and Muslim women scholars, particularly in the way they understood and utilized the divinity of the text, religious law, religious authority, feminist theory, traditional commentaries, and other academic tools. A similar treatment of these issues could also be noted among the laywomen of Chapter 5. As we shall see, none of these differences in approach was significant enough to make a sharing of hermeneutical techniques between Jewish and Muslim women scholars impossible. Furthermore, in some instances, the differences between these sets of scholars did not necessarily bear out in my conversations with laypeople.

Relating to ‘God’ in the Text

In general, the Jewish scholars I examined were more willing than their Muslim counterparts to question publicly the divine origin of scriptures. Having de-mystified the Biblical text, and having determined that it is “not a verbatim record of what God told Moses on Mount Sinai” Adler, Frymer-Kensky and Pardes did not struggle with the meanings of the Torah’s verses which marginalize girls and women in quite the same way that Wadud, Barlas, Mernissi and Shaikh struggle with the meanings of Q 4:34. In their attempts to make sense of violence-condoning words that conflicted with their conception of God, some of these Muslim women scholars tried to expand the lexical implications of daraba, and others looked to the example of the Prophet as a better indication of the meaning behind this verse. But Wadud ultimately ended up saying ‘no’ to this verse, suggesting that God’s “disclosure can never be contained by any means, least of all the heavily flawed means of human linguistic communication” and Shaikh made a similar move by featuring the ‘embodied tafsīr’ of one of her respondents, who rips this verse out of her version of the Qur’an, asserting that after her own experiences with domestic abuse, she just “refuse[s] to accept that Allah allows or condones violence against women.”

The strategies of Wadud and Shaikh’s informants still acknowledge the Qur’an as divine, but are

8 Adler, Engendering Judaism, 31.
9 Wadud, Inside the Gender Jihad, 207.
10 Sa’diyaa Shaikh, “A Tafsīr of Praxis”, 86.
less willing to accept that this verse, as literally applied, is part of God’s will. At the end of the day then, the results of these latter approaches allow Muslim interpreters to proceed in their readings of texts in a similar manner to that of their Jewish counterparts who, for all intensive purposes, have removed God from the analytical equation.

To be fair, had I examined in detail the scholarship of more Orthodox Jewish feminists, such as Tamar Ross, I might have found a similar attachment to the divinely revealed nature of the Torah, so it is precisely the existence of multiple theologies and denominations in Judaism that enables the widespread acceptance of modern Biblical criticism and the idea of reading the Torah as something other than divine in Jewish Studies. On the other hand, the long history of Orientalist scholarship that dominated Islamic Studies for so long is part of the reason that Muslim academics cannot as easily broach questions pertaining to the divinity of the text. Indeed, contemporary Muslim scholars do not want to be seen as in any way validating ideologies that were at their core dedicated to undermining the legitimacy of Muslim scriptures. Furthermore, despite the existence of competing Islamic orthodoxies, at the community level, the divinely-revealed nature of the texts tends to be a foregone conclusion.\(^\text{11}\) So the critical methods of analyses used by Jewish and Muslim exegetes are very much situated in and defined by the histories and historiographies of each discipline, which are in turn shaped by the accepted and acceptable currents of thought operating within interpretive communities. And all of this must be beared in mind as we undertake these comparisons across traditions.

Still, this distinction in the way that scriptures were viewed by adherents in the two faith communities was also played out among the respondents to my own interviews. While Rebecca may not be representative of all the Jewish participants, her comment that she would like women to know that traditional texts, including the Torah, “are not from God” would not register as controversial in many communities of contemporary Jews.\(^\text{12}\) On the other hand, Nuria’s assertion “I don’t know what I’m going to do with this [text], but it doesn’t fit in with what I


\(^{12}\) See Chapter 5, 55. Interview with Rebecca. 14 September 2011.
understand about my religion or about God,” may be met with more reticence among some communities of Muslims. While their presumed divine provenance could certainly curtail the interpretive possibilities available to Jewish and Muslim women readers, it instead compels these interpreters – whether scholarly or laypeople – to come up with more creative hermeneutical solutions to reconcile the texts with present-day liberal values. In the case of Jewish women, this often translates into the use of biblical criticism, comparative Near Eastern history, feminist, literary, psychoanalytic and legal theory to transform the significance of the texts, while for Muslim women, this often means looking for alternative examples in the Qur’an itself, or in Prophetic traditions, Prophetic biographies, traditional tafsīr, Arabic dictionaries, or appealing to modern hermeneutical theory to expand the meanings of the divine word. In the case of someone like Sa’diyya Shaikh though, we see an appeal to Christian feminist theology and a re-evaluation of the interpretation of laypeople and other marginalized voices as a way of opening up the text even further. Although Shaikh’s primary borrowings have been from Christian feminist scholars, perhaps her move into other disciplines is an indication of the kind of hermeneutical innovation that could result from greater cross-pollination between Jewish and Muslim Women’s Studies.

**Attachment to ‘the Law’**

Despite a different understanding of scriptures that exists at both the scholarly and practitioner level, as already mentioned, the strongest argument for Jewish and Muslim women to be reading one another’s interpretive work is the similar emphasis on religious law in both traditions. But while the Jewish scholars surveyed in this study were less invested in the Torah as being verbatim the word of God, they perhaps exhibited a slightly more sentimental attachment to the law than do the Muslim women scholars we have explored. Frymer-Kensky, Hauptman and Adler – those Jewish scholars identified as having the highest degree of textual confidence precisely because of their interest in religious law – all recognize the importance of halakha as an active element in contemporary Jewish communal life. Adler offers a need for a new conception of halakha, while Frymer-Kensky and Hauptman still regard classical halakha as binding, but see a great deal of latitude in the way that classical halakha can be interpreted and

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13 See Chapter 5, 53. Interview with Nuria. 27 Aug 2011.
implemented, so as to make more room for egalitarian results. Adler, on the other hand sees classical halakha as too mired in patriarchal categories, but, emphasizes the centrality of halakha as “authentic Jewish language for articulating the system of obligations that constitute the content of the covenant.”

Although they do not phrase it this way, in many respects, these scholars are more interested in what they understand as the ‘spirit’ behind Jewish law, the broad principles underlying the halakhic system. But even Peskowitz and Pardes, who take a more literary approach to traditional texts and have less personally invested in how these laws are interpreted and played out in the present, still acknowledge the importance of law in the world of the texts and in present-day communities.

In contrast, Muslim women interpreters on the whole seemed less willing to accept post-Qur’anic legal pronouncements as binding in their present-day lives. We will recall that Barlas saw the hadith and fiqh as ‘textualized misogyny’ and Shaikh’s analysis of Hadith somehow avoided any real discussion of the Hadith as a source of religious law. To be fair, Barlas and Shaikh did not dismiss the legal and cultural significance of the Hadith and fiqh entirely; Barlas, in her later work acknowledged that an overhauling of fiqh is needed if gender equality is to be found within an Islamic framework, and Shaikh in her more ethnographic writings noted the way laywomen experience shari‘a in their confrontations with religious authorities. Still, it is clear that their work is meant to privilege new approaches to Islamic exegesis (either more ‘liberatory readings’ or a ‘tafsīr of praxis’) over law. On the other hand, Wadud, Mernissi and Ali were identified as the most textually confident because they saw earlier legal reasoning as useful tool for helping to reconfigure Islamic norms and improve upon the day-to-day realities of Muslim women. And much like their Jewish counterparts, all of these women scholars are more interested in the ‘spirit’ of the law. However, these Muslim scholars regard classical fiqh traditions as more of a guide rather than a binding precedent. In Mernissi’s case, although she cites juristic arguments about scriptural texts as a way of shaking up their more conventional meanings, as the only

14 Rachel Adler, Engendering Judaism, 25.

15 On Pardes’ recognition of law in the world of the Torah and its interpreters, see Chapter 2, 50-51. On Peskowitz’s understanding of the importance of the Talmud and Talmudic law even among less traditional Jews, see Chapter 3, 28-30.


scholar in this study presently living under Muslim state laws, we see a clear preference in her writings for the separation of religion from the purview of the state, and that when it comes to religious legal debate, “Each generation takes it up where the previous one left it to discuss it again...”\(^\text{18}\) In a similar vein, Wadud suggests that the legal codes in their current form are rife with sexist ideas and need to be rewritten to conform with Qur’anic principles of egalitarianism, and Ali would rather American Muslims adopt civil forms of marriage and divorce to better reflect contemporary American Muslim relationships.\(^\text{19}\) These scholars are not entirely opposed to the formulation of a new religious law; however, unlike Adler, they do not suggest their own way of method for restructuring the law, and in contrast to Frymer-Kensky and Hauptman, they do not go so far as to suggest that existing law is already broad enough to encompass and adapt to these new ideas about gender. On the whole, Muslim women scholars agree that Islamic law requires reform, but in the absence of such reform, they are less inclined to suggest that post-Qur’anic regulations require strict adherence. On the other hand, while Jewish women scholars also suggest that halakha needs to reflect contemporary needs and concerns, they are less inclined to throw the baby out with the proverbial bathwater.

This distinction in terms of Jewish women feeling more attached to halakha as a system, and Muslim women displaying more reticence towards fiqh did not bear out as much among the Jewish and Muslim laywomen whom I interviewed; their relationships with law were similarly complicated, regardless of their faith affiliations. Like the scholars above, they favoured the spirit of the law over a rigid, literal application of it. However, even though they spoke of law negatively in the abstract, religious praxis based in different articulations of religious law was still very much the lynchpin of their experiences as Muslims and Jews. The women’s descriptions of day-to-day life indicated that traditional practices marked all of their lives in profound ways, especially in the areas of prayer, diet and modesty/sexuality. The variation existed not so much across faith lines, but rather in terms of textual confidence, which, among laywomen, translated into the degree to which women felt more empowered to interpret the

\(^{18}\) See Mernissi, *The Veil and the Male Elite*, 147. Admittedly, she does warn here of the malleability of the verses and the need to develop general principles which embrace the sovereignty and free will of the individual. She charges that it is a lack of courage on the part of the imams, both past and present, to make these assertions that allows the sacred texts to continue to be manipulated contra the best interests of women.

\(^{19}\) See Chapter 2, 47; Wadud, *Inside the Gender Jihad*,
meanings of scriptures themselves and adapt their praxis accordingly. Generally speaking, those with more childhood experience of the texts, coupled with an adult interest in more extensive study of them, tended to be the most bold when it came to assuming their rights to lay interpretation and acting based on their own understandings of religious laws.

Problems with Authority
However, there was significant difference was in the way that Jewish and Muslim women viewed religious authority. On the whole, the Muslim women’s experiences with religious authorities were negative. They expressed frustrations with not being heard by religious leaders, not having access to them, and not feeling that they were adequately qualified to be guiding the community on spiritual matters. This is actually consistent with Kecia Ali’s contention that imams in North America and other Muslim thinkers “who are perceived as authorities, and who write and speak from a position of authenticity, are not themselves fully grounded in the classical tradition; they have a selective and often incoherent relationship to law and scriptural interpretation.”

While Jewish participants also expressed frustration with authority figures representing more traditional streams of Judaism, the existence of denominations, with varying views on theological/philosophical, political and socio-cultural issues allowed some women to express actual gratitude and admiration for the rabbis in their lives. It is perhaps this significant difference – that regardless of one’s theological beliefs, one can find a spiritual home within a recognized Jewish community – that left Rachel Adler searching for a way to breathe new life into Jewish marriage from within the halakhic system, and felt assured that her new vision could be managed (and dissolved) by trusted Jewish spiritual leaders. In contrast, Kecia Ali preferred to turn to secular institutions to help resolve the inequalities created by traditional models of Islamic marriage.

The On-going Relevance of Feminist Theory
Another significant difference noted earlier was in the way that feminist theory was treated by these two sets of scholars. Given the long and fruitful relationship between North American

20 Kecia Ali, Sexual Ethics and Islam, 155.
Jewish women and feminist activism alluded to in Chapter 1, the Jewish scholars profiled in this study – Frymer-Kensky, Pardes, Hauptman, Peskowitz and Adler – more easily embraced feminist theory as a critical tool than did Amina Wadud and Asma Barlas in particular. But this relationship with feminism is not as polarized across faith lines as it may initially appear. Even Wadud and Barlas employed sex and gender as categories of analysis in their writings, would concur with “the radical notion that women are human beings,” and believe that gender equality is a Qur’anic value, suggesting that their wariness of the feminist label is more about misconstruals of its meanings and its historical abuses.21 Indeed, as noted by Wadud herself as well as Ziba Mir-Hosseini, much of the resistance to the term feminist among Muslim women is due to its historical links to Western colonialism, imperialism and secularist agendas.22 Still, other Muslim women scholars in this study, including Fatima Mernissi, Sa’diyya Shaikh and Kecia Ali all applied the term to their own work without reservation, as did the vast majority of the Muslim laywomen that I interviewed, suggesting that feminist theory can be extricated from its roots and redeployed by Muslim women, despite the colonial baggage attached to it. That virtually all the Jewish laywomen also continued to self-identify with a philosophy and movement often termed passé in the mainstream media, illustrates its continued relevance as a strategic tool for women struggling for gender justice and equity in their faith communities.23

‘Traditional’ Commentary
As we illustrated in Chapters 2, 3 and 4, Jewish and Muslim women exegetes were influenced by and in conversation with both traditional modes of exegesis as well as a variety of academic trends when it came to classical Jewish and Islamic texts. Frymer-Kensky, Pardes, Wadud, Mernissi, Adler and Ali in particular all referenced and appealed to the work of traditional commentators, rabbis and jurists in their own analyses of texts while also making use of tools

21 Wadud, Qur’an and Woman, xviii.
inherited from feminist, literary, legal and psychoanalytic theory and well as the modern fields of Biblical and Qur’anic Studies, as well as the academic study of Hadith and Talmudic literature. As noted earlier, the work of these women scholars seems to occupy confessional and academic spheres at once, in an effort to gain legitimacy and recognition among lay practitioners and colleagues in these still largely male-dominated fields.

While the laywomen of this study, particularly those with textual confidence did, on occasion, also cite from traditional texts and commentaries in my interviews with them, their own perspectives on the texts were likely just as, if not more, influenced by the works of contemporary academics, intellectuals (including some theologians), as well as authors and journalists writing on Jewish and Islamic issues. The laywomen made little distinction between academic writings and more popular ones, but rather found guidance and inspiration for how to assimilate traditional texts and praxis into their lives from a variety of literary sources. The myriad of sources used by these highly-educated women suggests that the dividing lines between confessional and academic writing is not always that clear and that in the minds of laypeople, the distinction may be entirely irrelevant.

The Intersection of the ‘Secular’ and the ‘Religious’ in the Development of Textual Confidence: The Strategic Use of Legal Pluralism

The comparative nature of this work was not only about comparing two religious systems; it was also about bringing the ‘religious’ into conversation with the ‘secular’. Indeed, other than the obvious implications for Jewish and Islamic Studies, this study also has implications for comparative legal studies, as it touches on the intersections between secular state law and religious laws in modern liberal democracies and illustrates, as we saw in Chapter 1, the way that women have utilized secular legal rights in order to leverage their position with their religious communities. As we noted earlier, this was not simply a matter of trading in one legal system for another, as some political theorists have suggested they should, but rather finding a way to live with integrity in both, to be accepted as both citizens and community members.
Indeed, as noted throughout this work, that women choose to maintain a commitment to religious laws is often an anathema to feminist theorists. While the lay practitioners I interviewed did struggle with the law and especially with the more narrow (and often ill-informed) interpretations of authority figures, for the textually confident women, as long as they felt empowered to adapt the law, based on the spirit or intention of the traditional texts as they understood them, they had no significant qualms with keeping religious law as an active part of their lives. And this was despite an awareness that secular laws generally offered them more equitable results and did not make the same demands upon them in terms of how to dress, where to pray, and what to eat. Accordingly, the findings of my ethnography demonstrate that conceptions of religious law and its role in women’s lives are more complicated than some conventional wisdom in feminist theory would allow; Jewish and Muslim women’s loyalty to traditional praxis are intricately connected to questions of identity and belonging as well as the way women view religious texts and religious authority.

The Imbrication of Secular and Religious Educational Institutions

In addition to challenging some forms of feminist theory, the complex relationship that women have with the study of religious texts also has interesting applications for literacy studies and educational theory. We noted earlier that girls in general continue to be disadvantaged by standard teaching models throughout the world. Add to this factor the historic exclusion of women from the study of traditional religious texts along with an ongoing resistance to applying critical feminist methods to these texts, and women’s continued interest in and mastery of classical religious sources is all the more remarkable.

But as already noted, the groups of Jewish and Muslim women profiled in this particular study are exceptional in many ways. Whether academics or laypeople, they are a far cry from the illiterate ‘ritual experts’ of Susan Sered’s landmark ethnography which looked at the religious lives of elderly Jewish women living in Jerusalem. In Chapter 1, we commented on the


sophisticated level of knowledge that particular Jewish and Muslim women had of both their secular and religious legal entitlements. This kind of knowledge of the law is a clear departure from the norm. Indeed, one of the one of the major recommendations to come out of the Ontario-based report *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* which examined the ramifications of faith-based arbitration in matters of family law, was that women needed to be provided with more accurate, accessible and culturally-appropriate information about their legal rights.  

This recommendation was premised on the idea that the public at-large, and marginalized women in particular, are often quite ignorant of their rights under secular law and as several respondents to the consultation process noted, this lack of knowledge is exacerbated when it comes to religious laws.  While many women may be largely unaware of their legal rights and religious obligations, the Jewish and Muslim legal activists described in Chapter 1, as well as the subset of women who participated in the When Beruriah Met ‘A’isha meetings, all had the benefits of a university education in addition to a solid grounding in the religious tenets of their respective traditions. Among my informants, even those who had the least exposure to religious teachings and religious texts in their youth had gone on to study more about their religious traditions in a variety of post-secondary venues, including universities, seminaries as well as other community-supported initiatives (halaqat, classes in mosques and synagogues, community centres, and intensive learning programs).

Consequently, this study reveals the way Jewish and Muslim women in North America have employed a variety of secular and religious institutions to help serve their interests. In the same way that an intersection of secular and religious law pervaded the lived communal experiences of North American Jewish and Muslim women, we see the way that both secular and faith-based educational institutions – especially universities and religious day schools – also served as an important nexus in the development of ‘textual confidence’ among both the academics and laywomen in this study. Without the religious foundation provided by more intensive faith-

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based institutions, most of the women in the study would not have had the traditional tools required in order to navigate classical religious texts. On the other hand, without the opportunity to study these textual traditions in secular universities as well, my informants and the scholars at the centre of this study, would not have the critical tools to reread these same texts using new and creative approaches.

**Areas for further Study: Reconsidering Ritual**

But the ways in which both scholars and laywomen redefine traditional texts and actively integrate these alternative meanings into the fabric of their daily lives also has broader implications for the study of religion. Throughout this study, I have as much as possible referred to Jewish and Muslim women’s engagement with text and “praxis” rather than invoking the language of ritual. As mentioned earlier, my use of praxis follows Rachel Adler’s conception of the term as “more than the sum of the various practices that constitute it. As praxis is a holistic embodiment in action at a particular time of the values and commitments of a particular story.”

Since I felt that existing academic theories of ritual, such as those posited by Clifford Geertz and Talal Asad still do not adequately capture the unique and all-encompassing admixture of social and divine obligation, ‘right’ performance, and theological ideals grounded in revered texts at play in Judaism and Islam, I preferred Adler’s use of ‘praxis’ to connote the complex relationship that the women of my study have with text and with religious law, belief and practice. While Asad’s notion of bodily practice of prescribed behaviours forming and reforming certain desirable beliefs is perhaps closer to the mark than Geertz’s notion of ritual as symbolic of beliefs, Asad’s theory still under-explores the role and involvement of law and scriptures in the cultivation of practice and belief.

Accordingly, despite some of the obvious parallels in subject matter between my own work and that of Saba Mahmood, I also felt that her analyses of women’s experiences of ritual missed the mark in some important ways. Indeed, Asad’s theory has been particularly influential on Mahmood whose landmark work, *The Politics of Piety*, explores contemporary Muslim women’s

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involvement in the Egyptian piety movement. Mahmood maintains that by adopting a set of external practices and techniques, the women of her study hope to alter their internal states so that they conform to a particular understanding of Islamic morality. As she explains, this is the converse of what we might expect,

...instead of innate human desires eliciting outward forms of conduct, it is the sequence of practices and actions one is engaged in that determine one’s desires and emotions. In other words, action does not issue forth from natural feelings but creates them. Furthermore, in this conception, it is through repeated bodily acts that one trains one’s memory, desire and intellect to behave according to established standards of conduct.\(^{30}\)

Although several of the participants in my own study repeatedly invoked language that suggested a similar internalization of laws and practices (i.e., “This is my Islam inside”\(^ {31}\) or “for [Judaism] to come inside you”\(^ {32}\)), I have referred to Sa’diyya Shaikh’s notion of ‘embodied tafsîr’ as a more meaningful way to characterize the empowered textual interpretation of my informants, rather than citing Mahmood’s work. Mahmood’s ritual theory, in my opinion, fails to wholly attend to the role of scripture in facilitating an embodied piety, and hence misses the function of praxis in the lives of my informants.

To help illustrate my point, I refer to Mahmood’s discussion of Amal, an Egyptian woman who actively cultivated shyness as a virtue she understood herself to be lacking. As Mahmood explains,

> Taking the absence of shyness as a marker of an incomplete learner process, Amal further develops this quality by synchronizing both outward behaviour and inward motives until the discrepancy between the two is dissolved. This is an example of a mutually constitutive relationship between body learning and body sense – as Nama says, your body literally comes to feel uncomfortable if you were not to veil.\(^ {33}\)

However, what Mahmood fails to note in her discussion of Amal is that Amal comes to her position on “cultivating shyness” after reading verse 25 in Surat al-Qasas, which is not about covering or veiling, as one might expect at all, but rather about a woman walking with shyness

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\(^{30}\) Mahmood, *Politics of Piety*, 159.

\(^{31}\) See Chapter 5, 35.

\(^{32}\) Chapter 5, 41.

\(^{33}\) Mahmood, *Politics of Piety*, 156.
when she approached Moses. Although Amal thought shyness was “required of us by God” she also thought that behaving shyly when she did not feel it inside her would be “hypocritical,” until she read the word *istiha* in verse 25 of the Sura. She defined this as “making oneself shy, even if it means creating it...And finally I understood that once you do this, the sense of shyness eventually imprints itself on your inside.”\(^{34}\) So while Mahmood may be correct, following Talal Asad, that repeated iterations of bodily performance helps to cultivate an obedient or docile body, the fact that this change in behaviour arises from her own engagement and interpretation of scripture is not insignificant. In fact, it was an empowered and independent understanding of the texts that led Amal to wanting to adhere to the text’s prescriptions. It was imposed from outside because it arose from a text which she believed to come from God, but she internalized the virtue of modesty in a unique way. Although elsewhere, Mahmood does recognize that the perceived authority of one of her informants, a leader in the dawa movement, derives from “…her command of canonical issues and debates’ and that “it is precisely her knowledge of authoritative sources that enable [her] to challenge…widespread…practice[s],”\(^{35}\) it is interesting that in the case of Amal, Mahmood omits the significant role of a lay practitioner’s empowered textual exegesis in “disciplining” her mind and body.

So while Mahmood’s theory is possibly relevant to the comments of my informants about an internalized Islamic or Jewish praxis, given Shaikh’s emphasis on lay interpretation of the Qur’an in her work, the notion of an ‘embodied tafsir’ seems to resonate more directly with the findings of my own study. However, all of this speaks to the need for a paradigm shift in the way that ritual is understood in the study of religion, and that some room needs to be made for the important role of religious texts and religious law in the cultivation of the pious self, particularly amongst practitioners of Judaism and Islam.

**Conclusion**

The challenges of comparative study in religion cannot be overstated. Nonetheless, I believe that this study illuminates and underscores the value of such comparative endeavours, and the implications they can have on a variety of different disciplines. By examining the textual

\(^{34}\) Idem.

\(^{35}\) Mahmood, Politics of Piety, 89.
intersections and interactions of contemporary Jewish and Muslim women in a North American context, one can recalibrate the significance of religious law, texts and praxis in present-day Jewish and Muslim communities. But this study also raises questions for feminist theory, ritual studies, comparative law and literacy theory. Both the commonalities and the differences between both groups of women, as well as between the scholars and the laypeople, help bring into sharper focus the obstacles still facing contemporary Jewish and Muslim women who seek greater equity in the spheres of personal status and religious leadership. But by bringing these interpretive and practical struggles together under one study and illustrating the shared turn to empowered lay interpretation on the part of both Jewish and Muslim women, this work perhaps also helps to redefine what it means to be a Jewish or Muslim religious authority in the 21st century.


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Descriptions of the Text-Study Groups and Participants

I have two main sources of data for Chapter 5: 1) a group of Jewish and Muslim women, mostly young professionals, that had been meeting regularly in women’s homes throughout the Greater Toronto Area since 2004 (the ‘Community-based Group’); and 2) two university-based groups sponsored and operated out of the University of Toronto’s Multi-faith Centre which met bi-monthly – the first from February 2009-April 2009 (‘Group A’) and the second from September 2009- December 2009 (‘Group B’).

Recruitment

Recruitment of participants for the Community-based Group was through word of mouth. The vast majority of the women were unknown to me prior to the start of the sessions and had heard of the group through friends or saw it posted on a community listserv.

Before starting the Community-based group, I held two preliminary, more targeted focus group sessions, one for Jewish women and one for Muslim women. I moderated the session for Jewish women and asked a Muslim friend – who was originally supposed to co-facilitate the group with me – to moderate the meeting of Muslim women. The focus groups were meant to gather data on women’s expectations, fears and motivations for joining a Jewish-Muslim women’s group in order to have a better sense of how to structure the meetings. As noted above, the Jewish women’s focus group proved to be one of the most politically charged gatherings in the history of group. Nonetheless, these sessions emboldened me to move forward. And since my friend who was meant to co-facilitate with me had to bow out due to work pressures, I was forced to learn a lot more about issues of gender in Islam than I had originally bargained for. Despite these unexpected wrinkles in the plan, the interfaith group began convening in early 2004. As mentioned earlier, women were recruited through a simple e-flyer that was distributed through friends and acquaintances. The flyer indicated that any interested Jewish or Muslim woman, regardless of age and religious background was welcome to attend and that previous experience
with classical religious texts was not required. Since I had no budget, women were asked to print their own copies of texts and to bring vegetarian and alcohol-free snacks to share.

The two Multi-faith Centre groups were held from February-April 2009 (Group A) and then again from September-December 2009 (Group B). Recruitment and registration were arranged through the Multi-faith Centre website, with e-flyers and posters about the group being promoted by other university-based clubs (Hillel, Muslim Student Association) and departments (Religion, Jewish Studies, Law, Near and Middle Eastern Studies, Women and Gender Studies, Education, etc.).

The Community-based Group: Background
This group began by meeting monthly on Sunday afternoons in different participants’ homes. Women were invited to bring vegetarian and alcohol-free snacks to share with the group, and, typically, five to eight women would attend each session. Over the years, this group would look at texts on women studying scripture, marriage and sexuality, feasts and fasts, modesty laws, dietary laws, menstrual laws, circumcision, and depictions of women related to Moses. Upon starting my PhD in 2005, the once regular meetings of this group began to suffer. While I continued to convene them as often as my scheduled allowed, once the Multi-faith Centre meetings began, the Community-based Group met very infrequently. Nonetheless, between 2009 and 2011, three meetings of the Community-based Group were held and I tape-recorded those sessions. These sessions explored menstruation and circumcision laws in both traditions.

The Women
Among the interviewees, Petra, Rachel, Joanna, Sophie and Talia were members of this group. Zahra had begun attending this group, but after two sessions, she left Toronto to pursue her MA in Egypt. Several years later, she would resurface in Group A at the Multi-faith Centre, having returned to Toronto to do her PhD. Mona also had an interesting cross-over role between the groups. While she began as a participant in the Community-based Group, because of her background in Biblical Hebrew in addition to her doctoral studies on the Qur’an, I would ask her to co-facilitate Group A at the Multi-faith Centre with me. Her own work and family pressures frequently made it difficult for her to attend those university-based meetings, so much so, that when I asked several of the participants in these groups about how her involvement as co-
facilitator enhanced the meetings, most were unaware that she had been meant to function in that capacity, despite the fact that my introductory letter about the group made Mona’s role patently clear. With the exception of Sophie, all of these women were unknown to me before the start of the sessions.¹

The Multi-faith Centre Groups: Background

Group A and Group B met twice per month, which resulted in five sessions for each group. I provided tea and cookies for Group A, while the Multi-faith Centre provided funding for a pizza lunch for Group B’s meetings. Topics explored in Group A included women studying scripture, ¹

¹ In the interest of full disclosure, it is important to note that Sophie and I have been friends for over 20 years. She is one of two women who initially began attending the group sessions as a favour to me. I was trying to establish a group in the community and was worried that no one would come, so I enlisted two of my long-time friends to fill some seats. Of course, their presence was also meant to offer me some moral support in a new endeavour, a role that both women – mercifully -- continue to play in my life and for which I am extremely grateful. When it came down to conducting interviews about the group, I hesitated about including both Sophie and Orli in my data sample. Ultimately, I did choose to include some of their comments because I felt they provided some valuable insights about the nature of the community-based groups, since they, like Petra and Rachel had been involved from the very beginning. I chose to do an in-depth interview with Sophie as well because I felt that her own background and educational experiences varied much more from my own whereas Orli and I had attended exactly the same schools, lived in similar neighbourhoods and had similar interest in interfaith work and I worried that our respective opinions had been informed by our past discussions and analyses of such subjects with one another. Since according to researcher Catherine Aull Davies, “A relationship of very close personal friendship neither guarantees nor precludes good ethnography,” I feel that there is nothing ethically problematic in including her comments in this research as long as I remain reflective and attentive to the way that our friendship might colour my analysis of the data she provides. Throughout my research, I have tried to be mindful of the words of Tamar El-Or (1997), that intimacy “offers a cozy environment for the ethnographic journey, but at the same time, an illusive one...The informant’s willingness to cooperate with the ethnographer might arise from different motivations, but it usually ends when the informant feels that he/she has become an object for someone else’s interests.” (188). Yet despite all of these power dynamic minefields involved in the addition of friends as research subjects, I nonetheless contend that including Sophie in the data is a worthwhile risk, as she provides an important and contrapuntal perspective on experiences of inter-faith text-study. As she herself readily attested, the group was initially of no interest to her whatsoever,

“My initial reaction was – you can ask my mother, she can confirm this: Why would I study Qur’an where there is so much Torah that I haven’t studied. I’d rather just study Torah. I’d rather just go to a havruta [paired learning session] and study with other people what do I need this – why would I study Qur’an? It is not part of my tradition and I’m not really that interested. But Shari is doing this thing, she is one of my best friends and I will go.” (Interview with Sophie. 12 June 2012.)

While she first came as a favour to me, her continued and consistent attendance at group meetings had little to do with my role as group facilitator. When I asked what made her stay, she replied without hesitation, “The people. I remember so clearly that first meeting in your apartment. In a big room and it was so exciting and positive...I was sold after that meeting.” To be fair, I would eventually become friends with several women in the group. The only difference is that, in Sophie’s case, the friendship preceded her group involvement. For friendship and its effect on ethnography, see Catherine Aull Davies, Reflexive Ethnography: A Guide to Researching Selves and Others (New York: Routledge, 1999), 82; Nancy Naples, “Standpoint Analysis and Reflective Practice” in Feminism and Method: Ethnography, Discourse Analysis and Activist Research (New York: Routledge, 2003), 37-48.
depictions of Beruriah and ʿAʾisha, women and leadership, and dietary laws. Topics explored in Group B included depictions of Sarah and Hagar, Miriam and Maryam, and modesty laws. These meetings were typically attended by three to eight participants.

The Women
Among the interviewees, Yasmin, Mona, Zahra, Lejla, Nuria, Ariel, and Abigail participated in Group A, but there was some cross-over here too, as Yasmin, Nuria, and Abigail would return to participate in Group B as well. Other Group B interviewees included Natalie, Tamara, Hafsa, and Rebecca.

Content and Structure of the Sessions
For each of the three groups, I would look to the participants for input regarding topics and would compile a packet of texts for each meeting accordingly. Source materials would include selections from the Torah, Talmud, Qurʾan and Hadith. The reasons for examining those particular sets of texts were two-fold: a) they were the texts recognized as most authoritative; and b) they were also the most easily available in English translation. Nonetheless, the work of other well-known classical commentators would be included on occasion as well. Based on the group’s topic choices, I would select a combination of narrative texts which explored depictions of women as well as texts on more legally-oriented topics. For those who were interested and had the language skills, copies of the original texts in Hebrew and Arabic were also available. Occasionally, I would also include passages from feminist and other academic sources, or literary and artistic renderings of biblical stories as a counterpoint to our discussion.

Regardless of the venue, each meeting would begin the same way, with the reading aloud of a list of ground-rules for dialogue that had been crafted by participants in the women in the focus group sessions (see attached). This was a reminder that although the group hoped to foster a candid discussion, opinions needed to be articulated in a respectful manner. We would then go

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2 Occasionally, I would also include other rabbinic sources, including excerpts from the Tosefta, Jerusalem Talmud and other midrashic collections as a counterpoint to the material that had been included in the more normative texts. While most of the Hadith sources in these text packets were from the Sahihayn, it never occurred to me to include Hadith from non-canonical Sunni sources, since the Hadith were already such a contested source in contemporary Muslim communities. If more Shia women had been involved, I likely would have needed to include Shia Hadith sources as well.
around in a circle to introduce ourselves and participants would also be asked to answer a question of a slightly more personal nature. After that participants would be asked to read passages aloud and we would then discuss anything that stood out or seemed unusual or difficult in the text. While my prepared questions usually involved the noting of similarities and differences between Jewish and Islamic texts on the same topic, participants often began comparing and contrasting traditions spontaneously prior to my having a chance to ask the question.  

**Choice of Method**

While utilizing participant-observation techniques to examine existing Toronto-based halakat for Muslim women and Torah or Talmud classes for Jewish women might have produced similar comparative data, the advantages of convening an interfaith text-study group as focus group and conducting in-depth follow-up interviews were numerous. This combination of ethnographic methods was preferable because it allowed for me to examine the women’s engagement with a) a wider range of Jewish and Islamic sources, both legal and non-legal; b) topics specifically related

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3 These occurrences are too numerous to mention, but a few examples may illustrate how these comparisons arose. A reading of Maimonides’ text on circumcision being a desirable way to curb the sexual instinct in males prompted Petra to reflect on Islamic ideals of sexuality. She found Maimonides’ position surprising, “From an Islamic point of view, this is viewing sexuality in a very negative way, like something that stands in the way...whereas in Islam, this is one of the reasons to get married, to have sex, not necessarily procreation, but to have sex in a lawful way and it is a positive thing to have sex, this wouldn’t make sense to take pleasure away from the man. It doesn’t make sense to diminish the pleasure that you could have...This sounds almost Christian to me.” This prompted the group to reflect on different ideas of sexuality at play in both Jewish and Islamic thought. See Taped Session “Circumcision” 22 March 2009. On another occasion, I asked why the rabbis would have included in the Talmud traditions about Beruriah, a woman who mercilessly mocks them, and this led Yasmin to reflect on the position of Rabia in Sufi literature, since she too often takes jabs at the male figures around her. As she posited, “I know some people say this about Rabia as well, that she wasn’t real, that she was invented to take a poke at a particular position. There’s so many different positions, so perhaps they pose a woman as a very distinctive “other” to point out flaws in different people's logic.” Lastly, a discussion about 'A’isha having been a virgin at the time of her marriage as compared to several of Muhammad’s other wives who were widows led Ariel to compare this to the fact that Kohanim, those once assigned to carry out Temple rites, are by contrast, prohibited from marrying widows and divorcees in Judaism. See Taped session “Beruriah and 'A’isha”, 17 Feb. 2009.

4 While to the best of my knowledge, my groups were the only place in the city where Jewish and Muslim women could together study classical religious texts, most synagogues and mosques in the Greater Toronto Area (GTA) offer classes specifically catering to women interested in studying the Torah and Qur’an. These courses are designed to be accessible to those with little or no previous experience with primary texts. For example, Beth Tzedec, the largest Conservative synagogue in the city, offers a course called Torah Through Female Eyes taught by the rabbi’s wife (See [http://www.beth-tzedec.org/home.do?ch=content&cid=4618](http://www.beth-tzedec.org/home.do?ch=content&cid=4618) accessed July 14, 2009). As well, an institute known as the Shariah Program provides women with intensive Arabic classes to facilitate their reading of the Qur’an, tafsir and hadith in their original language (See [http://www.shariahprogram.ca/intensive-arabic-study.shtml](http://www.shariahprogram.ca/intensive-arabic-study.shtml) accessed July 14, 2009).
to gender; c) unfamiliar texts from another tradition; and d) other religiously-committed women (or religiously-committed women who are considered ‘other’).

**Text-study Groups as Focus Groups**

I recognize that my very involved role in orchestrating the structure, venue, tone, topic and source materials for each meeting is atypical for an ethnographic field site. Although I have referred to the text-study groups as focus groups, in many respects, the group functioned as a class, with me serving the triple roles of teacher (providing historical context, explaining terms, concepts and the role of the texts in each tradition) as well as discussion moderator (ensuring respectful dialogue and group interactions, while seeking opinions and textual insights from group participants), and researcher (collecting and analyzing transcriptions of the conversations). Nonetheless, an argument can be made that the class itself was akin to a focus group in that it made "use of group interaction to produce data and insights that would be less accessible without the interaction found in a group" and since the discussion amongst group members was "based on topics supplied by the researcher who typically takes the role of a moderator".  

Although focus groups are often associated with marketing research, where they tend to be used as "a preliminary step to be followed by quantitative research," their use in the social sciences is unique in that they often supplement or combine with other qualitative

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5 This dual function of teachers as instructors and discussion moderators is very much a taken-for-granted component of e-learning. See Mario Barajas, *Virtual Learning Environments in Higher Education: A European View* (Barcelona: University of Barcelona Press, 2004), 23. Nonetheless, it is not unheard of in general educational theory either. While Antonio Gramsci objected to students engaging in ‘uninformed dialogue’ and Paulo Friere refused to apply the term ‘facilitator’ to educators, since the teacher maintains “a certain level of knowledge and breadth on the subject matter they teach” in comparison with the students, both felt that there needed to be a balancing of “authority and freedom” or “spontaneity” and “conscious direction” in the teacher-student relationship. Hence the teacher’s task is to be directive, yet also to elicit informed dialogue from the student. See Peter Mayo, *Gramsci, Friere and Adult: Possibilities for Transformative Action*, (London: Zed Books Ltd., 1999), 66-67; Carmel Borg and Peter Mayo, “Gramsci and the Unitarian School: Paradoxes and Possibilities” in *Gramsci and Education*, eds. Carmel Borg, Joseph A. Buttitgieg, and Peter Mayo (Lanham, MD: Rowman and Littlefield, 2002), 100.

6 David Morgan, *Focus Groups as Qualitative Research*, (London: Sage Publications, 1997), 2. As Morgan has also pointed out, there is no standard in terms of how structured a focus group discussion needs to be (see pages 39-42). In this instance, the questions and material discussed in each group were not identical; indeed, topic choice was driven, in part, by input from participants, and interests in each group varied. But to say that it was a loosely structured, free-flowing discussion would not be correct either, as in my role as teacher, I guided the group through their interactions with the text. Through a variety of texts, both narrative and more legally-oriented, I hoped to see how Jewish and Muslim women would engage with one another and with problematic texts from a gendered perspective in each of their faith traditions.
In this case, as already mentioned, the focus group sessions were utilized in combination with surveys and in-depth individual interviews.

Focus groups are sometimes referred to as “group interviews”, or “controlled group discussions” and certainly the obtrusiveness of the moderator is a factor in analyzing the collected data. However, there is no evidence that the moderator’s impact is any greater than the researcher in participant observation or individual interviewing. Furthermore, while focus groups are artificially created environments, which can be viewed as “performances in which the participants jointly produce accounts about proposed topics in a socially organized situation,” so-called ‘natural’ discussions are arguably just as much performance as well. As Janet Smithson has argued, “there is not a 'simple opposition of the institutional and the everyday, the artificial and the real'...Rather, 'natural' conversation and various forms of institutional talk, including classroom, courtroom, workplace and research-generated talk, are all part of a range of situations for talk.” While there does seem to be a “premium on the naturalistic ability to observe group behaviour” in this case, there was no existing ‘naturalistic’ setting for Jewish and Muslim women to study text together, which made it necessary for me to artificially construct the field site. Nonetheless, even without a ‘naturally’ occurring setting, as women living in a multi-cultural environment such as Toronto, Jewish and Muslim women are inevitably constructed and construct themselves in relation to one another as well as the general community at large, so the space in which they were interacting was not as wholly contrived as it may seem.

**Methods of Data Collection**

Information for my ethnography was gathered through a variety of techniques, including six taped study-sessions, field-notes, pre and post-surveys, and sixteen in-depth interviews. All participants in each of the groups were aware that the study-sessions were to serve as part of my doctoral research and signed consent forms to that effect. Although I have included some

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excerpts from the study-sessions themselves and impressions from my fieldnotes, the bulk of the information derives from my interviews with participants. Those who agreed to be interviewed had attended a minimum of two text-study meetings, while most had participated in several more. A few of the women would also go on to participate in various Toronto-based Scriptural Reasoning groups, which involved Christians and Jewish and Muslim men as well, in all but one case, WBMA was their first experience of interfaith textual study. Each semi-structured interview took approximately 1 ½ - 2 ½ hours. I either met participants in their homes or coffee shops in locations that were mutually convenient.

**Interview Questions**

Each interview began with the same question, “State your name, age and what you do and then describe for me your own ‘spiritual or religious journey’. In other words, please describe your experience with Judaism/Islam growing up, including synagogue/mosque involvement and relationship with scripture study and then reflect on how that may or may not be different today.”

After getting a snapshot of a woman’s religious narrative, I would then ask a few more standard questions about her relationship with text, previous experience with interfaith engagement, feminism, and scholarly/academic writings by women. And then I would transition into more specific questions about the group. Interview questions were then adapted to fit the particular experiences of the interviewee, but generally included the following:

- Did you ever question your own right to read classical religious texts in your tradition? How important is it for women to study religious texts?
- Do you consider yourself a feminist? Why or why not? What does this term mean for you?

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11 Actual snippets of text-study sessions have been used minimally, as the dialogue is often difficult to follow when removed from its larger context. As Mike Highton has observed in the context of Scriptural Reasoning, “What goes on in a Scriptural Reasoning group does not lend itself easily to summary or report. After all, the success of a Scriptural Reasoning discussion is not measured by the production of take-home conclusions, and even when a discussion generates ideas that seem to have legs those ideas sometimes seem rather lame when taken out of the context that they temporarily powered.” See Mike Highton, “Describing SR”, Unpublished Conference paper. June 2008. Consequently, this chapter has relied more heavily on my field notes from sessions, as well as my in-depth interviews of informants who participated in text-study sessions.
• How did you hear about the group? Why did you join?

• What stands out for you from our sessions? Were there any topics that were particularly interesting? Was there anything you learned about your own tradition or the other tradition that surprised you?

• What was it like reading your own texts through the eyes of people who had likely never seen them before?

• Would you still have participated if men were involved too?

• Would it have been equally interesting if the group involved Christians? [and a follow-up question for those who had also participated in SR: What makes the Jewish-Muslim dialogue different from the Jewish-Muslim-Christian triadology?]

• How important was the involvement of scriptures in the dialogue? Would it have been as compelling if the group was a book, film or food club for Jewish and Muslim women?

• How would you characterize your relationship with halakha or fiqh?

• Are feminist readings or interfaith readings of religious texts considered ‘transgressive’, ‘risky’, or ‘frowned upon’ in the communities with which you affiliate? Which do you think might be perceived as more transgressive: the feminist reading or the interfaith one?

• Was the Israel-Palestinian conflict the elephant in the room whenever we got together?

• Have you read the work of any Jewish or Muslim women academics? Do scholarly approaches to classical texts inform the reading practices of laypeople?

• Is there a relationship between scripture study and political activism? Do you think a new interpretation can trickle down and change everyday practice?

**Demographics**

Of those I interviewed, four women were from the Community-based group and the remaining eleven participated in the two Multi-faith Centre groups. Eight Muslim women and eight Jewish women were interviewed in total. Ages ranged from 20 to 48 years of age. At the time of the interviews, seven of the women were married (two Jewish women and four Muslim women), and
three of those women had one or more children. Eight of the women were students, and 4 of these were graduate students. The Muslim participants were much more diverse in terms of ethnic, cultural and religious backgrounds. While three were born in Canada, two were European (German and Bosnian), two were Egyptian or of Egyptian descent, one was of South Asian descent although via Kenya (not India or Pakistan), one woman was of Guyanese descent, and one was Malaysian. Of the Jewish women, all the participants were Ashkenazi, meaning that their families were primarily from somewhere in Eastern Europe and most closely followed the customs established by Franco-German Jews in the early Middle Ages rather than the customs established by the Jews who originally settled in the Iberian Peninsula. In most cases, the specific country of origin (i.e., Russia, Poland, Lithuania) did not even come up during the course of our interviews, perhaps because their families had been in Canada or the United States for several generations. However, two national sub-groups among the Jewish women did come up as well: Americans and South Africans. Two participants were American women attending the University of Toronto and while one woman was born in South Africa and came to Canada as a young girl, the other was born in Toronto, but both very closely identified with the South African community in Toronto. It is noteworthy that there were no Israelis or Palestinians that participated in any long-term way in any of the groups. Many of the Muslim women who passed through at different points were South Asian, and that is indeed very much reflective of the Muslim population in the GTA. While one Sephardic woman attended the very first meeting in my home, she never returned. Another significant group not represented is Somali women, who also represent a large demographic in the GTA. For a closer look at the relationship of Toronto-based Somali women with traditional texts, please see the work of Rima Berns-McGown, *Muslims in the Diaspora: The Somali Communities of London and Toronto* (Toronto: University of Toronto Press, 1999).

All this data represents the statuses and affiliations of the women at the time of their interviews. For instance, Abigail was raised Reconstructionist, but went to a more traditional synagogue at the time of our interview and Yasmin was born into a Sunni family, but adopted Shi’ism as an adult. Although Petra adopted Islam as an adult, the term ‘convert’ is not one with which she identified, since she was not raised with any religion. Nuria similarly objected to the term Sunni as meaningful to her. Yet both acknowledged that that is the way others would identify them.
### Demographics at a Glance

#### Status

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<th>Total # of Interviewees</th>
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<th># with one or more children</th>
<th>Working Professionals</th>
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<td>5</td>
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#### Cultural/Ethnic/National Affiliations

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**Denominational Affiliations**

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<td>2</td>
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<tr>
<td>Muslim Women</td>
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<table>
<thead>
<tr>
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<th>Shīʿa</th>
<th>Ismaili</th>
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**Religious Education**

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<th>Studied in yeshiva/seminary/madrassa programs</th>
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<tr>
<td>Day School Education (secondary)</td>
<td>Supplementary religious school (evenings and/or weekends)</td>
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<th>Day School Education (secondary)</th>
<th>Supplementary religious school (evenings and/or weekends)</th>
<th>As part of a state/public school program</th>
<th>Studied in University</th>
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**The Interviewees: A Legend**

* Indicates one of the 6 women that I profile in-depth as ‘Textually Confident’
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<th>Religious Affiliation</th>
<th>Student?</th>
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<td>Hafsa</td>
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<td>Joanna</td>
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<td>Lejla *</td>
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**Post-script on Demographics**

Although this is fairly obvious, it is worthwhile to note that people are not static beings and the ideas and beliefs they expressed in their interviews with me are not necessarily reflective of the way they live their lives in the present. Rather, the statements of theirs that I recorded are merely a snapshot frozen in time, a small fragment of their journey as women with religious and personal commitments. For example, I can attest to the fact that since our initial interview, Natalie lost her interest in being religiously observant and Hafsa took on niqab.\(^\text{12}\) When I

\(^{12}\) Hafsa actually appeared on a local news program talking about the decision to take on niqab. She posted a link to this video clip on her Facebook profile. The interviewer at one point asked her if she would choose her own
crossed paths with Tamara and mentioned that a year and a half after our interview, I was only beginning to analyze the data, she remarked. “Wow, my opinions are probably so different now. That’s okay though. I stand by whatever I said then.”

In general, I was constantly struck by the eloquence, the thoughtfulness, the intelligence of the women I interviewed and felt deeply humbled and honoured that they chose to share their life stories with me. In many cases, I could feel the painful decisions they were struggling with, whether they pertained to reconciling their own beliefs with those of their family’s or if they were confused and bewildered about how to put into practice their own religious convictions, despite familial and communal pressures.

husband. Hafsa was baffled by the question, “Of course! Why would I leave such an important decision up to anyone else?” See CityTv broadcast January 26, 2012. <http://www.citytv.com/toronto/citynews/videos/183423>