

Working Paper Series

Villanova University Charles Widger School of Law

Year 2007

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Jesus' Legal Theory—A Rabbinic Interpretation

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Abstract

This article locates the ancient debates between Jesus and the Talmudic rabbis within the discourse of contemporary legal theory. By engaging in a comparative reading of both Gospel and rabbinic texts, I show how Jesus and his rabbinic interlocutors sparred over questions we now conceptualize as the central concerns of jurisprudence. Whereas the rabbis approach theological, ethical and moral issues through an analytical, lawyerly interpretation of a dense network of legal rules, Jesus openly questions whether law is the appropriate medium to structure social relationships and resolve interpersonal conflicts. Through an examination of Talmudic sources, this paper argues the controversies between early Christianity and the nascent rabbinic Judaism (summarized by Paul in terms of Letter vs. Spirit) have the same argumentative architecture as the ongoing debates over law vs. equity, procedural vs. substantive justice, rules vs. standards, formalism vs. instrumentalism, and textualism vs. contextualism. Moreover, the contrast between the Gospels and the emerging rabbinic discourse brings Jesus' bold claims about the role, rule and domain of the law to the fore. Thus while the mainstream representation of Christian legal theory tends towards rules, procedural justice, formalism and textualism, this analysis of primary sources shows that Jesus argued for exactly the opposite.

Introduction

These are heady times in America's law and religion conversation. On the campaign trail in 1999, then-candidate George W. Bush declared Jesus to be his favorite political philosopher.¹ As President, Bush appointed two practicing Catholics to the Supreme Court, creating a Catholic majority on the nation's highest court. Recently, legal commentators have turned to criticize both the evangelical President and the Catholic justices for improperly basing their decisions on their sectarian Christian convictions.² Today, more than anytime in the past century, the ideas of an itinerant first century preacher from Bethlehem are increasingly relevant to American law.

Corresponding with the renewed focus on Christianity in public and legal discourse, members of the American legal academy have produced three collections of

¹ See Archive of CNN Columns, <http://archives.cnn.com/1999/ALLPOLITICS/stories/12/15/religion.register/> (last visited May 17, 2007).

² See Religious Rights and Wrongs, http://uchicagolaw.typepad.com/faculty/2006/07/religious_right.html#more (June 22, 2006, 10:56) (critique of President Bush); Our Faith-Based Justices, http://uchicagolaw.typepad.com/faculty/2007/04/our_faithbased_.html (critique of "faith-based Justices").

essays discussing the relationship between Christianity and the law. *The Teachings of Modern Christianity on Law, Politics and Human Nature* explores the role of the church and the Christian faith in defining the content and boundaries of the modern heterogeneous and democratic state.³ Its two volumes offer a variety of Christian views on the constitution of the secular City of Man and sacred City of God. The volumes, which display a transnational orientation, discuss topics such as: whether political authority and law come from God, or whether they are contrivances of Man; whether law should aim only to set baselines of conduct for temporal life, or whether law should have moral and spiritual aspirations as well; whether government and law are necessary responses to the fallen state of mankind, or would be necessary even in an ideal state of human nature; and which conditions justify disobedience of civil law on grounds that it conflicts with divine law.⁴ The understanding of “law” laid out in *The Teachings* is fairly broad and abstract, more similar to the way a theologian or political theorist, rather than a lawyer, interprets the term. Thus, the perspective of a more conventional lawyer/scholar—one necessarily tied to the detailed rules of a specific jurisdiction—is somewhat deemphasized in these volumes.⁵

Christian Perspectives on Legal Thought is a more topically (though less theologically) diverse work that speaks directly to American law, or at least to the American legal academy.⁶ The book opens with essays on the relationship between Christianity and the liberal state, and then continues to examine twentieth century legal and social movements (e.g., realism, law-and-economics, feminism and civil rights activism) from several Christian perspectives. The book concludes with a few articles that seem intentionally balanced between left and right leaning approaches to specific areas of the law. In fact, as one sympathetic observer noted, the implicit message of this book is to show that mainstream, center–right and center-left legal perspectives can all fit

³ THE TEACHINGS OF MODERN CHRISTIANITY ON LAW, POLITICS & HUMAN NATURE: VOLUME ONE (John Witte Jr. & Frank S. Alexander eds., 2006).

⁴ See Kent Greenawalt, *Reflections on Christian Jurisprudence and Political Philosophy*, *id.* at 716-17.

⁵ See David Skeel, *The Unbearable Lightness of Christian Legal Thought*, U. Penn Law School, Public Law Working Paper No. 06-37, <http://ssrn.com/abstract=929850> (SSRN August 2006).

⁶ CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (Michael W. McConnell et al. eds., 2001).

comfortably under the heading “Christian legal theory.”⁷ The takeaway lesson is that, even in these heady days of ideologically and religiously driven politics, we (that is, the mainstream legal academic establishment) need not fear the emergence of a distinctly Christian voice within the legal area.

The most recent addition, *Faith and Law: How Religious Traditions from Calvinism to Islam View American Law*, follows the path delineated in *Christian Perspectives*.⁸ As its title suggests, this is the most ecumenical of the collections, and roughly one fourth of its pages are devoted to non-Christian (Jewish, Islamic, Buddhist and Hindu) perspectives. The book seems more focused on specific legal issues than its predecessor volumes and it covers the many traditional law and religion topics (abortion, gay rights and euthanasia) as well as issues less commonly addressed in this discourse (immigration, self incrimination and victim compensation). Nevertheless, the book does not veer far from the traditional City of God/City of Man framing and mainly interprets “law” as a term roughly interchangeable with “social policy.”

The sheer breadth and diversity of these volumes, in terms of both the arguments presented as well as the theological and political background of their authors, tell us much about Christians’ internal self-understanding about the relationship between Christianity and law. But notably absent from this literature is any extensive examination of Jesus, and *his* views about jurisprudence and legal theory.⁹ Despite the overall diversity of the writings, there is little discussion about what Jesus thought about law, lawyers, legal rules and the legal order.¹⁰

⁷ See William Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707 (2003).

⁸ FAITH AND LAW: HOW RELIGIOUS TRADITIONS FROM CALVINISM TO ISLAM VIEW AMERICAN LAW (Robert Cochran ed., 2007)

⁹ A similar trend can be seen of Islam. One scholar has noted “students of Islamic law have a rather odd habit: They tend to leave to Prophet himself out of consideration when analyzing the development of Islamic law.” See Lawrence Rosen, *Muhammad's Sociological Jurisprudence in THE JUSTICE OF ISLAM: COMPARATIVE PERSPECTIVES ON ISLAMIC LAW AND SOCIETY* 177 (Rosen ed., 2000). For a notable exception to this trend, see Jeremy Waldron, “*Dead To the Law*”: *Paul's Antinomianism*, 28 CARDOZO LAW REVIEW 301 (2006).

¹⁰ For a discussion of some of the complexities of this type of discussion in prelude of a yet-to-be-published book tackling the subject, see John P. Meier, *The historical Jesus and the historical law: Some problems within the problem*, 65 THE CATHOLIC BIBLICAL QUARTERLY 63 (2003).

Whereas Christian interpretations focus on the role of the state, its boundaries with the Church, and the interaction between democracy, liberalism natural law and church doctrine, the rabbinic reader is naturally (if somewhat ironically) drawn directly to Jesus, and specifically his debates with the Pharisees—the forbearers of rabbinic Judaism. Jesus and his followers sought to decrease the overall importance and density of the Torah’s legal regime, a view most succinctly expressed in Paul’s assertion that “the letter kills, but the Spirit gives life.”¹¹ The rabbis, however, assume exactly the opposite. Not only did the Talmudic rabbis mandate meticulous observance of the Torah and its commandments but also they went so far as to claim that study of the Torah’s law—wading waist-deep into the particularity and picayunity of its details—reflects the highest form of divine service.¹² Thus, God is said to find no comfort within this world save for within the narrow confines of *halakha* (Jewish Law).¹³

This paper explores Jesus’ legal theory from a rabbinic perspective. By engaging in a comparative reading of the Gospel and rabbinic texts, I look to draw out the jurisprudential assumptions embedded in the foundational texts of each religion. This reading demonstrates that the debates between Jesus and the Pharisees resonate with contemporary discussions, not only within the field of “law and religion” but also regarding the province of jurisprudence more generally. Jesus, no doubt, rejects the rabbinic assertion that the legal-interpretive enterprise forges the most direct path to the divine. But he goes further, claiming that law is an ill-suited medium through which to structure social relationships and resolve interpersonal conflicts. Thus, the rabbinic reading focuses on Jesus’ (and Paul’s) bold, radical and subversive claims about the role, rule and domain of the law.

Two final notes about scope and method are necessary. First, within the ambit of theological and historical studies, the question of “Jesus and the law” usually refers to a longstanding debate, going back as far as the New Testament itself, regarding which

¹¹ 2 Corinthians 3:6. Unless otherwise specified, all biblical quotations are from the Revised Standard Version.

¹² See, e.g., Talmud Shabbat 127a; *More generally*, Norman Lamm, TORAH LISHMA: TORAH FOR TORAH’S SAKE (1989).

¹³ Talmud, Berakhot, 8a.

elements of the Mosaic Law Jesus and/or Paul sought to abrogate, change, fulfill, reaffirm or abolish, etc.¹⁴ In this context, law refers to the Torah or the “Law of Moses,” *i.e.* the legal rules and practices observed by first century Jews. In this paper, however, law is defined more broadly. *Law* refers to a reasoning process, an ongoing conversation whereby professional jurists analyze legal texts, precedents and rules to reconcile competing social ideals and values.¹⁵

The second relates to the usage and reading of texts. I read both the Gospels and the Talmud as composite literary units, much in the way each work is traditionally read within its faith community.¹⁶ Thus while the methods of text and source criticism can shed much light on the development and formation of ideas within each tradition, this paper takes a broader view and focuses on the general differences between the legal cultures of the Gospels and Talmud.¹⁷ For this reason, the description of Jesus is not of the historic person, but rather of the persona presented within the canonical texts. Similarly, the debates between Jesus and the Talmud, while anchored in textual narrative, place little emphasis on the actual conversations that may or may not have occurred, but offer a jurisprudential account of the debate between the emerging Christian and rabbinic traditions.

The paper proceeds in five parts. I open by recounting my experience talking to a modern-day church group about the rabbinic thought process. The conversation revealed vast differences not only as to the underlying theology, but also relating to the role of law

¹⁴ See, *e.g.*, Acts chapter 15 and Galatians chapter 2. More recently, see *e.g.*, Robert Banks, *JESUS AND THE LAW IN THE SYNOPTIC TRADITION* 242 (1975); E.P. Sanders, *JESUS AND JUDAISM* (1985); Alan Watson, *JESUS AND THE LAW* (1996) William Loader, *JESUS' ATTITUDE TOWARDS THE LAW: A STUDY OF THE SYNOPTIC GOSPELS* (2002); John P. Meier, *A MARGINAL JEW: RETHINKING THE HISTORICAL JESUS* (Forthcoming 2007).

¹⁵ Were I were more inclined towards continental legal thought I might describe law as an “epistemic subject” formed by a set of “discursive practices” that leads to the “production of an autonomous social reality.” See *e.g.*, Gunther Teubner, *How the Law Thinks: Towards a Constructivist Epistemology of Law*, 23 *LAW AND SOCIETY REVIEW* 727, 732 (1989).

¹⁶ The Mishna is a legal code that expounds the Bible and constitutes the core of Oral Law. It was compiled and edited by Rabbi Judah the Prince in the early third century. The Talmud is a collection of records of academic discussion, homiletical exposition and judicial administration of Jewish Law by generations of scholars during several centuries after 200 c.e. The Talmud consists of the Mishna and the Gemara, which is an expanded commentary on the Mishna

¹⁷ A recent account of this question from the text critical tradition can be found in William Loader, *JESUS' ATTITUDE TOWARDS THE LAW* 509-18 (2002)

and the space allotted to it within the religious consciousness. Parts II and III draw out these themes through a comparative reading of the foundational texts of each religion. Part IV turns to a broader discussion of the role of law within each religion's consciousness. Part V concludes by applying the results of this comparative study to the central questions of contemporary legal theory.

I. *A Rabbi Walks into a Church . . .*

I was recently invited to speak to an adult education class at a mainstream Presbyterian church. The topic of the lecture was how the rabbis read the Bible. I began by asking the group, "What is the first commandment in the Bible?" After a short pause, I received two responses: "love the Lord your God" and "love your neighbor as yourself." Although both were fine answers, neither was the answer I was looking for. The group had apparently interpreted my question as either: what is the first of the Ten Commandments (Decalogue), or, what is the first, *i.e.* primary, commandment? The question I intended to ask (and what every talmudically-trained Jew would have understood) was: beginning in Genesis Chapter 1, what is the first commandment one encounters in the text?

After a short discussion, I told the group that the Talmudic rabbis maintain that the first "commandment for generations" (*i.e.* applicable beyond Adam and Eve) was to "be fruitful and multiply."¹⁸ The group nodded in approval, and I sensed we were then on the same page. Next, I asked a simple, almost inevitable, question from a Talmudic perspective, but one deeply foreign to my audience.

C.S.: "How many?"
 Group: "How many what?"
 C.S.: "How many children?"
 Group: "What do you mean, how many children?"

At this point I realized that we reached a bit of a brick wall, so I backed up.

C.S.: "Do you believe the Bible is the word of God that expresses His Will?"

¹⁸ Genesis 1:28.

Group: "Yes."
 C.S.: "Do you believe you have to follow it?"
 Group: "Yes."
 C.S.: "Well, then how do you know when you have done it? How do you know when you have been sufficiently fruitful?"

Again, blank stares from the audience. It was clear that the last question produced some discomfort. I proceeded to explain that when the rabbis read the Bible, they look to put it into practice, to operationalize it. Thus, most of their questions, and the rabbinic discourse as a whole, look to define the nature and scope of the various legal provisions in the Bible and Talmud. And much like a good law professor, the rabbis dream up some rather bizarre hypotheticals to test the limits of each rule. When the rabbis read the verse "be fruitful and multiply," they immediately attempt to define the properties and scope of this commandment, or *mitzvah*.¹⁹ Here the issue boils down to how many children are required to fulfill the biblical command.

This seemed to clarify the issue to the assembled audience. I explained that the answer is two. The rabbis assume that if a person has two children, that person has fulfilled the minimum biblical duty of fruitfulness. However, there is a debate: The School of Shammai holds that the children must be two males, while the School of Hillel finds that one needs a male and a female.

For the Talmud, this is only the beginning. The tradition continues to wonder: If one remarries, must he or she have children again?²⁰ Is the obligation binding upon the man, the woman or the marriage?²¹ What about children from an adulterous or illicit relationship?²² If the children born are themselves incapable of reproducing, do they count?²³ What if the children were capable of reproducing at birth, but sustained genital defects later in life?²⁴ Must a couple have more children if their children die?²⁵ If the

¹⁹ See Mishna Yevamot 6:6 and Talmud Yevamot 61a-63b.

²⁰ *Id.*

²¹ Mishna Yevamot 6:6

²² See Minhat Hinukh, section 1.

²³ Talmud Yevamot 62b.

²⁴ Minhat Hinukh, section 1.

²⁵ Talmud Yevamot 62b

deceased children had children, can those grandchildren be counted?²⁶ What if under the holding of the School of Hillel (one male and one female), the daughter dies but leaves behind two male (grand)children?²⁷ These are exactly the questions arising in the Talmud and subsequent commentary.

At this point, predictably, I was beginning to lose the group. I got the bug-eyed, “you’ve got to be kidding,” expression from nearly everyone, as if to say, “If this is what the Talmud is about, then all the criticism of the Pharisees is dead on.”

I then paused, saying, “Let’s leave the rabbinic answers to these questions for now, but let me hear how in your tradition, you reason towards the answers. Surely you want to fulfill the word of God, so how do you know when you have done it?”

The most obvious and telling response was the ensuing silence. The uneasy quiet indicated that the group had never thought to break down this question into the level of detail found in the Talmud. The command was not conceptualized as binding or operational in quite the direct way the rabbis assumed. While all agreed that the biblical directives are binding, in the churchgoers’ minds the biblical commandments took on a less direct and concrete form. Overall, the church group did not interpret the verses as having the same degree of presentness and immediacy that was assumed by the rabbis.

The answers clustered into a few categories. Some thought that it was not a command to individuals as much as a charge to society as a whole, such that the verse did not direct any individual to undertake any specific act. The majority, however, responded with something like, “as many as you can handle,” “read the Bible and let the holy spirit guide/inspire you to the correct answer” or “discuss it with a pastor and other members of the faith community in order to reach the conclusion that is right for you.”

²⁶ *Id.*

²⁷ *Id.*

Though the responses of the church members are a product of twenty-first century Christianity, they capture some of Jesus' ambivalence towards the Talmudic habit of dwelling on legal technicalities, and in particular the Talmud's practice of dreaming up bizarre hypothetical situations to test the limit and scope of each rule. Repeatedly, the churchgoers told me that by focusing on the law rather than the heart, by not allowing faith to guide the answers and by legalizing what should be an intensely spiritual experience, the Talmud completely misses the point.

It is worth pausing to contrast how a similar conversation would have occurred at a traditionally oriented synagogue. To be sure, many (though not all) congregants would be unaware of the debate between Hillel and Shammai and are even fewer would display deep familiarity with the technical issues developed in the Talmud and subsequent commentaries. Most, however, would understand the basic premise of the question, and assume that the rabbinic discourse articulates the nature and scope of the Biblical commandment— as even laypersons are familiar with the overall culture, texture and method of *halakhic* reasoning. Having heard analogous discussions on everything from the earliest time one can begin the morning prayer service to how many ounces of *matza* one must eat at the Passover *seder*, the practicing Jew fully expects that the a similar Talmudic analysis will be brought to bear on the question of childbearing. They may not know the answer, but a synagogue audience would certainly get the question.

Stepping back, it became clear that I was watching radically different methods of biblical-textual interpretation at work. The Mishna, the Talmud and in their wake rabbinic Judaism conceptualize each of these questions as inherently legal. The reasoning process involves (using the modern lawyer's terminology) reading the statutory language and relevant caselaw, identifying the latent ambiguities and employing fairly conventional forms of legal analysis in arriving at a conclusion. Thus, while the Talmud's initial premise (reading the Bible as a statute) might be a bit foreign to lawyers, once the basic framework is accepted there is little in the rabbinic process that surprises the legally-trained mind.

The perspective I heard at the church that morning was very different. Very little of it resembled “law” in the way lawyers would use the term. In fact, many in the group felt that supplanting the letter with the spirit was precisely the point of Jesus’ ministry. Jesus spoke to the heart. While Christians of other persuasions (and eras) might have responded that my question raised moral, ethical or perhaps philosophical issues, they would, in any event, share the view that Jesus resisted the Pharisaic impulse to refract the religious experience through the prism of law. The aversion to Talmudism extends beyond a basic lack of familiarity. It expressed a foundational theological commitment embedded deep within the Christian worldview.

The divisions between the approaches can be usefully (if somewhat crudely) articulated in the terms of contemporary legal thought. The rabbinic view tends towards solving these problems via the application and analysis of rules, while the church group approach tended to resist rules and favored the application of broader, less fact-specific standards. Moreover, on its own account, *halakhic* reasoning is understood to be objective. It involves the application of texts and precedents to facts, and at least in theory is unrelated to the faith or spiritual temperament of either the questioner or the rabbi charged with answering him. Finally, and most broadly, the Talmudic mode assumes that any issue relevant to religious, social or economic life is both justiciable and answerable within the normative bounds of the halakhic-legal framework.

The Christian (particularly the contemporary Protestant) mode inhabits a very different discursive realm. Law is not the correct platform through which to analyze and decide important religious and social issues. It is thought to be overly restrictive, and unjustifiably replaces faith and love with rules and precedents. Rather, the reasoning process is directed inward, and exhibits more overtly religious, spiritual and subjective modes of reasoning and analysis. While this discourse, premised on seeking inspiration from prayer, Bible reading, and conversations within the fellowship, may produce fewer specific guidelines, the Christian readily trades rabbinic legalism for a method which actively engages the hearts and souls of the faithful.

These differences are not accidental. As the succeeding sections demonstrate, contemporary assumptions about the role and rule of law trace their roots back to the first and second centuries—the era when the Gospels and Mishna were produced and disseminated.

II. Shabbat and the Sabbath

One of the most contested issues between Jesus and the Pharisees in the Gospels is the proper meaning and observance of Shabbat, or the Sabbath. Throughout the synoptic texts, the Pharisees are presented as maintaining a rigid and legalistic view of Shabbat, while Jesus is seen as a reformer who argues that the Shabbat must mean more than the mechanical adherence to technical legal rules. The Gospels contain a number of healing narratives, wherein Jesus, in apparent contravention of then-binding law or custom, heals people on Shabbat, much to the astonishment of the populace and the chagrin of the Pharisaic establishment.²⁸ Similarly, the Gospels of Mark, Matthew and Luke recount Jesus' revolutionary teachings regarding the laws of Shabbat.²⁹ In each pericope, Jesus is portrayed as a teacher who scales back the Shabbat restrictions, while the Pharisees are presumed to favor a more rigid interpretation of the Torah's texts.

The encounter, as recorded in Mark Chapter 2, reads as follows:

23: One sabbath he was going through the grainfields; and as they made their way his disciples began to pluck heads of grain.

24: And the Pharisees said to him, "Look, why are they doing what is not lawful on the sabbath?"

25: And he said to them, "Have you never read what David did, when he was in need and was hungry, he and those who were with him:

26: how he entered the house of God, when Abi'athar was high priest, and ate the bread of the Presence, which it is not lawful for any but the priests to eat, and also gave it to those who were with him?"

27: And he said to them, "The sabbath was made for man, not man for the

²⁸ See also Matthew 12:1-13 and Mark 3:1-12. See also, Sharon H. Ringe "Holy, as the Lord your God commanded you": *Sabbath in the New Testament*, 59 INTERPRETATION 17 (2005).

²⁹ See Matthew 12:1-13, Mark 2:23-28 and Luke 6:1-11. A text-critical account of these stories can be found in, John Meier, *The Historical Jesus and The Plucking of the Grain on the Sabbath*, 66 THE CATHOLIC BIBLICAL QUARTERLY, 561-581 (2004).

sabbath;
28: so the Son of man is lord even of the sabbath."

The extent to which Jesus intends to abrogate the then-existing Shabbat laws has long been the subject of scholarly debate amongst Christian scholars and exegetes.³⁰ The text itself seems to pull in two directions. On the one hand, the analogy to David indicates a localized exception based on the extenuating circumstances. Alternatively, Jesus makes a bolder, more global claim by declaring that Shabbat should conform to Man rather than Man conform to Shabbat. Moreover, if Jesus intended to limit his teaching to exigent circumstances he could have used a more localized precedent from the book of Maccabees which records an explicit decision to violate Shabbat in order to save human life, and avoided making a more theologically audacious claim regarding Man's mastery over the law.³¹ In any event, while some scholars see a narrowly tailored exception on account of the students' dire hunger, others see a significant reassessment of the binding authority of Mosaic law.³²

But whatever the ambiguities in Jesus' original message, mainstream Christian interpretations have not limited Man's mastery over Shabbat to cases of dire physical distress.³³ The punch line is not the David precedent (an argument within the legal framework), but the far bolder assertion that Man is lord over the Shabbat. Since Jesus deemphasizes the role of Shabbat's legal strictures, he rejects the Pharisaic assumption that grain plucking creates a legal issue in the first place. Jesus moves the discussion away from that which man cannot do and towards how man should use the Shabbat for his moral and spiritual development (the exact purpose is debated within Christian theologies).³⁴ Following Jesus, Christian theologians engage that purpose directly rather than get caught up in the minutiae of the rabbinic discourse.³⁵

³⁰ E.g., Robert Sherman, *Reclaimed by Sabbath Rest*, 59 INTERPRETATION 38 (2005).

³¹ See 1 Maccabees 2:29-42.

³² See Alan Watson, *JESUS AND THE LAW* 40 (1996). Yet other scholars argue that a purpose, if not the purpose, of the passage is to illustrate Jesus' authority. See, e.g., Banks, *supra* note __, at 116. See also, e.g., Loader, *supra* note __, at 33-36, 55.

³³ See Mikeal C. Parsons, *Between Sermon and Text: Mark 2:23-28*, 59 INTERPRETATION 57 (2005).

³⁴ See Sherman, *Reclaimed by Sabbath Rest*, *supra* note __.

³⁵ *Id.*

In Paul's terminology, Jesus moves from the letter of the law and reaches for its spirit. Using modern legal vocabulary, the Christian approach attempts to look behind the rules of Shabbat and determine its overarching policy—an idea that is not reducible to positive legal rules. In-line with the trend towards broad principles and away from specific rules, Christian understandings of Shabbat tend away from specific definitions of approved and forbidden behavior.³⁶ Man has mastery over Shabbat because Shabbat, in terms of its rules and strictures, is not itself the goal, but instead simply a method of achieving the ultimate goal. Unlike the Pharisees, Jesus understood that he had the authority to direct the hearts and minds of people away from the rules and towards what modern lawyers would term the broader “policy objective.”³⁷

The Talmudist differs with Jesus' mode of argument on at least two points. First, the Talmudist would insist on determining exactly how hungry the students were.³⁸ Were they “gee I could use a snack” hungry or “I might die of starvation” hungry? To the extent the students were in mortal danger, the Talmud fully concurs with Jesus' ruling. But the Gospel text does not suggest that the “hunger” rose to such extreme levels and Mark's Gospel does not even claim the students were hungry at all. The narrative brings to mind a leisurely stroll through the wheat fields, rather than a ravenous search for sustenance, suggesting that Jesus' point extends beyond his students' dire and immediate hunger. Moreover the lack of interest in this detail in either the Gospel text or the

³⁶ Puritan sabbatarianism was a notable exception. See Winton Solberg, *REDEEM THE TIME: THE PURITAN SABBATH IN EARLY AMERICA* (1977). But while the Puritans certainly had a penchant for restricting activity on the Sabbath, unlike the rabbis, the Puritans displayed little appetite for theorizing about scope, properties and limitations of each technical detail.

³⁷ See Sherman, *supra* note ___ at 49. (“The mistake of sabbatarianism is to suppose that the object of our allegiance is the Sabbath itself, thus subordinating humanity to a divine instrument rather than to God himself. And historically, such an instrumentalist approach has tended to equate the quality of proper observation with a multiplied quantity of obligations and prohibitions.”); See also Dorothy Bass, *Christian Formation in and for Sabbath Rest*, 59 *INTERPRETATION* 25 (2005). Although using different terms, this is very much the spirit of Pope John Paul's 1998 apostolic letter, *Dies Domini*.

³⁸ In this regard, it is instructive to note how the Talmud deals with the David incident. The Talmud assumes that David was in mortal danger and was therefore permitted to eat the holy bread. Talmud Menahot 95b-96a. The Jerusalem Talmud takes this idea even a step further and assumes that David was so hungry that he ate all twelve loaves of the Bread of the Presence himself. Jerusalem Talmud Yoma 8:5. Either way the Talmudic rabbis assume that David's actions were legitimate *only because* he was in mortal danger of starvation.

ensuing interpretive literature attests to the de-legalization of this issue in the hands of the Christian interpreters.³⁹

The disagreement, however, goes further. The rabbis view the *corpus juris* of the Torah as having a dense and intricate legal architecture whereby each body of law has its unique set of rules and principles. The laws of Shabbat are distinct from the laws of the Bread of the Presence, and in general, violation of Shabbat is treated more severely than consuming the food designated for the Priests.⁴⁰ In order to make this analogy viable, Jesus would have to explain what principle is common to both Shabbat and the Bread of the Presence.⁴¹ To the rabbinic ear, Jesus' argument is the equivalent of an American lawyer arguing that because something is not counted as property for procedural due process purposes in constitutional law, it does not count as income for federal income tax law. Without greater elaboration, the analogy falls flat.⁴²

The differences in the approaches to Shabbat become even clearer when contrasting Jesus' reformulation of the Shabbat policies with the detailed treatment of the laws of Shabbat in the Mishna. Whereas Jesus moves away from the discourse of technical rules and searches for the underlying policy and meaning of Shabbat, the rabbis

³⁹ Sherman, *supra*.

⁴⁰ The punishment for intentional desecration of Shabbat is stoning, Mishna Sanhedrin 7:4, which is the most severe form of capital punishment, *see* Talmud Sanhedrin 49-50 and Maimonides *The Laws of Sanhedrin* 14:4. By contrast, eating of the Bread of the Presence is considered *me'eila* (private use of temple property), Mishna *me'eila* 2:8, and Maimonides, *The Laws of Me'eila* 2:7. The punishment for *me'eila* is lashes and is thus considered a lower degree of offense than violation of Shabbat. *See* Sanhedrin 93a & 94a, Maimonides, *The Laws of Me'eila* 1:3 (punishment by lashes).

⁴¹ *See* for example the discussion in Sanhedrin 93-94.

⁴² Interestingly, *Yalkut Shimoni* preserves a rabbinic tradition which interprets the conversation between David and Abi'athar having direct relevance to the laws of Shabbat. In this reconstruction, David argues that since he is in mortal danger, the laws of Shabbat are suspended, and David is allowed to partake of the Bread of the Presence. One of the glossators explains David to argue that since the fear of mortal danger is serious enough as to suspend the Shabbat laws, *a fortiori*, the lesser prohibitions of eating Temple foods is suspended. *See Yalkut Shimoni* to 1 Samuel 21, section 130 and comments of *Eytz Ra'ana'an* ad loc. Another variation of the relevance of Shabbat laws to this episode is recorded in Talmud, Menahot 95b (debating whether the enigmatic verse, 1 Samuel. 21:6, permits the Priest's to bake the Bread of the Presence on Shabbat). These texts suggest the existence of a tradition linking the David story specifically to the laws of Shabbat, and raise the possibility that Jesus intended to use the David precedent in a more direct, legalistic manner. Nevertheless, the Christian exegetical tradition has by and large neglected this rabbinic construction of David's argument.

move in the opposite direction, erecting a complex and multi-layered framework of Sabbatical rules and regulations.

The Bible instructs that one may not perform *melakha* (alternately translated as “work” or “labor”) on the Shabbat day.⁴³ The Mishna further divides the *melakha* prohibitions of Shabbat into 39 base categories.⁴⁴ The first eleven of these “labors” represent the stages in the bread baking process (the others relate to the manufacture of clothing and construction of shelter). Thus, the Mishna teaches that sowing, plowing, reaping (likely the issue in the New Testament passages), harvesting, threshing, winnowing, sorting, grinding, sifting, kneading and baking are all prohibited forms of labor.⁴⁵ Each of these base categories is then further divided into sub-categories.⁴⁶ Cooking, for example, is thought to fall under the general category of baking.⁴⁷

The Talmud’s legalistic discourse, however, stretches even further as each heading and sub-heading requires further definition. What constitutes cooking? What is the minimum heat (of either the dish or the water) required for something to cook?⁴⁸ How long must something be on the fire before it is considered cooked?⁴⁹ Is direct heat even needed? What about leaving an egg near a bubbling kettle or in the hot sun?⁵⁰ Is defrosting something equivalent to cooking it?⁵¹ Is salting vegetables equivalent to preserving them and thus too similar to cooking?⁵² And what is the scope of the prohibition? If A brings the fire, B brings the wood, C brings a pot, D fills the pot with water, E adds spices to the water and F stirs the pot, are they all liable? (yes)⁵³ Would the answer be different if the fire came at the end rather than the beginning? (yes).⁵⁴

⁴³ *E.g.*, Ex. 19:10 (The Fourth Commandment).

⁴⁴ Mishna, Shabbat 7:2.

⁴⁵ *Id.*

⁴⁶ Talmud, Bava Kamma 2a-b.

⁴⁷ Talmud, Shabbat 74b.

⁴⁸ Talmud, Shabbat 40b.

⁴⁹ Talmud, Shabbat 20a.

⁵⁰ Mishna, Shabbat 3:3. Talmud, Shabbat 38b-39a.

⁵¹ Talmud, Shabbat 40b.

⁵² Shulkhan Aruch, Orach Hayim sect 321:3. *See also* Mishna Berura and Arukh Ha Shulkhan ad loc.

⁵³ Talmud, Beitza 34a.

⁵⁴ *Id.*

Would it matter if one is unaware that cooking is prohibited on Shabbat?⁵⁵ Or if the cooking is an inevitable,⁵⁶ potential⁵⁷ or incidental⁵⁸ byproduct of some other action?

In the Talmudic tradition, each of these lawyerly questions must be answered through an extended inquiry into the nature and scope of the underlying rule.

For example, one of the base 39 *melakhot*-labors is the prohibition against writing. The Mishna teaches (and the discussion gets even more intricate in the Talmud) as follows:⁵⁹

Whoever writes two letters

With either the right hand or the left hand,

Whether the same letters or different letters,

Or different signs

In any language

is culpable.

...

Who ever writes in ink or other permanent dyes,

On two angles of a corner

on two tablets that adjoin as to be read together

is liable.

One who writes on his body is liable,

If one scratches on his body, the matter is disputed.

...

However, one who writes with colored liquids

Or with fruit juices

In the dirt or on anything that is not permanent

He is exempt.

One who writes in an unusual manner;

Such as with the back of the hand,

Or with his foot

Or with his mouth or elbow-joint;

Or if he wrote a single letter alongside an already written letter,

Or one letter on the ceiling and the other on the floor

Or on two pages of a ledger than cannot be placed side-to-side

(i.e. like a legal pad)

He is exempt.

If one writes a one lettered abbreviation,

The matter is then debated.

⁵⁵ See Maimonides, *The Laws of Shogeg*, 7:3.

⁵⁶ This is known as the concept of *p'sik reisha*. See, e.g., Maimonides, *The Laws of Shabbat* 1:5.

⁵⁷ This is known as the concept of *davar she'eino mit'kaven*. See Maimonides, *The Laws of Shabbat* 1:5; Shulchan Arukh, *Orah Hayim* 337:1

⁵⁸ This is known as the concept of *mit'assek*. Maimonides, *The Laws of Shabbat* 1:8.

⁵⁹ Adaptation of Mishna *Shabbat* 12:3-6.

This is exactly the discourse that Jesus takes pains to avoid. Prefiguring the charge associated with legal realism, Jesus fears that rather than clarify the core principles of Shabbat, the Pharisee's discourse gets lost in its own conceptual gymnastics and distorts, or even subverts, the ultimate goals of the law. Rather than discuss how Shabbat can be made into a more spiritually edifying experience, the Talmudist begins to worry about whether opening a curtain in a room with houseplants is deemed a derivative form of "planting," (i.e. aiding the growth of plants) because he has let in additional sunlight.⁶⁰ Even more dangerously, the Talmud generates a culture that celebrates the thrust and parry of legal argumentation and the endless wrangling over size and scope of each principle,⁶¹ which may overwhelm attempts at a context-sensitive discussion regarding the underlying purpose of the halakhic doctrines. As the common law's long and tortured history bears out, intricate doctrinal analysis has the uncanny ability to restrict the lawyer's field of vision, making it easy to lose sight of the intended purpose of the regulation at hand.⁶² It is likely this mode of thought that moved Jesus to charge the Pharisees with legally sanctioned hypocrisy.⁶³

For these reasons, Jesus is unconcerned with the aptness of his proposed analogy to David. I do not think that this is because he failed to understand the analogical problems, but because he thought they were beside the point. The David analogy offers something to the Pharisees on their own terms, but the real message lies in the more radical idea that Shabbat is for Man. Jesus' refusal to engage in the legalistic discourse stems from his theological and philosophical opposition to law since it focuses attention on the wrong set of ideas and ideals, or more concisely, "the letter kills." Christian interpretation thus understands Shabbat as a state of mind and emphasizes its moral rather than legal message. The heightened sense of love and devotion overcomes the technical regulations championed by the rabbinic caste.⁶⁴

⁶⁰ See, e.g., DOVID RIBIAT, 2 THE 39 MELOCHOS 274 at nn. 70-77 (1999).

⁶¹ See JEFFREY L. RUBENSTEIN, TALMUDIC STORIES: NARRATIVE ART, COMPOSITION AND CULTURE (1999).

⁶² See Milsom, *Reason in the Development of the Common Law*, 81 LQR

⁶³ See Matthew 23:1-14.

⁶⁴ JOHN MACARTHUR, THE MACARTHUR NEW TESTAMENT COMMENTARY: HEBREWS, ENTERING GOD'S REST 95 (1983) ("Sabbath rest was instituted as a symbol of the true rest to come in Christ.

Not surprisingly, the rabbis have a different reaction. They find Jesus' rejection of the entire legal framing of Shabbat laws to be an overbroad response to what lawyers call "a few hard cases." In fact, Jesus' articulation of the relationship between Man and Shabbat is found, nearly word for word, in the Talmud itself. Echoing Jesus, Rabbi Jonathan interprets the verse, Exodus 31:14, "You shall keep the sabbath, because it is holy *for you*," to mean, "Shabbat is given over to you, but you are not given over to the Shabbat."⁶⁵

Writing in the sixteenth century, and summing up the Talmudic and medieval discussion on the topic of healing and medicine on Shabbat, the *Shulkhan Arukh*, the Code of Jewish law, explains:

One who has a minor discomfort on Shabbat and he is strong enough to engage in daily activities as a healthy person; it is forbidden to desecrate the Shabbat on his account. However if one is sick in a way that there is danger to life and limb, it is a commandment to violate the Shabbat on his account, and whoever is more expedient in this matter is praised. If one hesitates to ask a Rabbi whether violation is permitted, it is as if he commits murder.

Any sickness that the doctors claim is dangerous . . . one is allowed to violate the Shabbat on his behalf. If one doctor says to violate and another finds that it is not needed, we violate the Shabbat. There are those who maintain that one does not even need to consult the doctors since all persons are deemed somewhat expert on these matters, and in cases of even a chance of loss of life, we are generally lenient.⁶⁶

While Jesus sees the conflict between human needs and the laws of Shabbat as a reason to reject the legalistic framing of the issue, the rabbis see this tension implied in the Biblical verses that legislate Shabbat law and incorporate these considerations into the legal/analytical framing of the Shabbat rules. Thus, the Talmud rules that one need not

That is why the Sabbath could be violated by Jesus, and completely set aside in the New Testament. When the true Rest Land came, the symbol was useless.") Id. at 101.

⁶⁵ See Talmud Yoma 85.

⁶⁶ Shulkhan Arukh, Orach Hayyim section 328.

die or endanger himself on account of Shabbat. This principle is understood, however, as an exception to the generally applicable rules and applied only in exigent circumstances. Thus, the *halakhic* discourse engages in a detailed balancing of the facts, looking for the most narrowly tailored approach to reconciling exigency with the laws of Shabbat. How hungry were the students? How sick is the patient? Can we heal (without creating further risks) by only breaking a rabbinic decree as opposed to a biblical injunction? The question will always center on how to achieve the policy objective (saving lives) while violating as little of Shabbat law as possible. Thus the Talmud is able to express Jesus' boundary-breaking insights squarely within the normative confines of the *halakhic* legalism.

The rabbinic response to Jesus' charge is that a nuanced jurisprudence can identify workable solutions to hard cases at a fraction of the cost in terms of the law's stability, predictability and authority. Echoing the formalist response to realist claims, the rabbis find that Jesus' approach fails to give any form or content to Shabbat, transforming it into a wholly subjective enterprise. Since the Christian approach resists the Talmudic-styled discourse, the rabbi is not surprised that Christians interpreted Shabbat as an idea that could be transferred to Sunday—a move inconceivable to the Jewish tradition in light of the text in the opening chapters of Genesis. Some Protestant circles have gone so far as to argue that since Shabbat is more a state of mind than a series of rules and restrictions, it should be applied throughout the entire week and not be confined to a single day.⁶⁷ While many Christians of course disagree with these interpretations, the Talmudist sees this as a predicable consequence of the policy-oriented jurisprudence promoted in the Gospel texts.

With the Mishnaic information as background, Jesus' debates with the Pharisees become easier to understand, not only in terms of the religious politics of first century Palestine but also in the wider context of jurisprudential movements and legal philosophy across the ages. Jesus clearly favors standards over rules, policy over doctrine and

⁶⁷ The English protestant reformer Robert Barnes said "For the Christian, every day is a Sabbath day and a feastal day and not only the seventh day." Cited in Solberg, *REDEEM THE TIME* at n.23. See also Sherman, *supra* note _.

abstract generalities over particular directives. The debates over Shabbat bring to mind debates regarding the Supreme Court's Due Process jurisprudence, or what is sometimes known as the "levels of generality" debate.⁶⁸ Justice Harlan, for example, could not conceive that the famous clauses enshrined in our foundational document were limited to a list of particular grievances maintained by the 18th century colonists.⁶⁹ In a move paralleling Jesus' view of Shabbat, Harlan looked to abstract a larger set of commitments that extend beyond the particulars of British abuses in the waning years of colonialism. Justice Brennan would later build on this model and develop his Living Constitutionalism, which makes the law responsive to shifting contextual considerations by articulating legal principles at a high level of generality.⁷⁰ Justice Scalia, among others, strongly disagrees with this approach.⁷¹ He fears that the unguided inquiry into the broad goals and policies of the Constitution will wind up reflecting the judge's personal views and biases rather than ideals embedded in either law or tradition. This position resonates strongly with the Talmudic view of Shabbat. Like Scalia, the rabbis assume that the most legitimate form of legal interpretation addresses the issues through concrete rules and doctrines stated and its lowest level of generality, and are deeply skeptical of a method that asks what Shabbat is "really" about. And while virtually every act of legal interpretation involves constructing abstract rules from particular cases—Justice Scalia and the Talmudic rabbis are remarkably skilled practitioners of this method—the difference emerges most clearly when the methods are viewed comparatively. Overall, there is a qualitative difference between the abstractions used by Justice Scalia versus those of Justice Brennan, and the interpretation of Shabbat put forward by the Talmud as opposed to Jesus.

⁶⁸ See, e.g., Laurence Tribe and Michael Dorf, *Levels of Generality in the Definition of Rights*, 57 U. CHI. L. REV. 1057 (1990).

⁶⁹ [T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. [Liberty] is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; . . . and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints. *Poe v. Ullman*, 367 U.S. 497, 543 (Harlan, J., dissenting).

⁷⁰ See, e.g., William J. Brennan, Jr., *The Constitution of the United States: Contemporary Ratification*, in *Interpreting the Constitution: The Debate Over Original Intent* (Jack N. Rakove ed., 1990).

⁷¹ *Michael H. v. Gerald D.*, 491 U.S. 110, 123 n.6 (1989) (Plurality op. of Scalia, J.) ("Though the dissent has no basis for the level of generality it would select, we do: We refer to the most specific level at which a relevant tradition protecting, or denying protection to, the asserted right can be identified.").

III. The Good Samaritan

Perhaps the most famous confrontation between Jesus and the law is the parable of the Good Samaritan. The Lucan narrative informs that a *lawyer*, likely a figure associated with the proto-Rabbinic Pharisees, stands up “to put [Jesus] to the test” and asks what he must do to inherit eternal life.⁷² Jesus then guides the lawyer to answer his own question. The lawyer responds that he must love one’s neighbor as one’s self.⁷³ The lawyer, however, seeks to “justify himself” and proceeds to ask Jesus “who is my neighbor?”⁷⁴ Jesus responds with the parable of the Good Samaritan, which instructs the lawyer to love everyone.⁷⁵

The lawyer is described as attempting to “justify himself”—presumably to justify behavior that does not conform to the plain meaning of the biblical mandate. The Gospel presents the lawyer’s question as irritating and unwarranted, perhaps even displaying a fundamental lack of faith. In the Talmud, however, the lawyer’s question is entirely appropriate. The lawyer asks, when must I treat another as myself, or more generally, what are the limits to the Bible’s mandate towards altruism? Whereas the Gospel rebukes

⁷² Luke 10:25

⁷³ See Luke 10:27.

⁷⁴ Luke 10:29.

⁷⁵ The entire text of Luke 10: 25-37 reads:

And behold, a lawyer stood up to put him to the test, saying, "Teacher, what shall I do to inherit eternal life?" He said to him, "What is written in the law? How do you read?" And he answered, "You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself." And he said to him, "You have answered right; do this, and you will live." But he, desiring to justify himself, said to Jesus, "And who is my neighbor?" Jesus replied, "A man was going down from Jerusalem to Jericho, and he fell among robbers, who stripped him and beat him, and departed, leaving him half dead. Now by chance a priest was going down that road; and when he saw him he passed by on the other side. So likewise a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he journeyed, came to where he was; and when he saw him, he had compassion, and went to him and bound up his wounds, pouring on oil and wine; then he set him on his own beast and brought him to an inn, and took care of him. And the next day he took out two denarii and gave them to the innkeeper, saying, 'Take care of him; and whatever more you spend, I will repay you when I come back.' Which of these three, do you think, proved neighbor to the man who fell among the robbers?" He said, "The one who showed mercy on him." And Jesus said to him, "Go and do likewise."

the lawyer, and Jesus refuses to fully engage the question, the Talmud welcomes the opportunity to identify the limits of the duty to aid principle.⁷⁶

To the extent the Good Samaritan parable is meant to critique rabbinic Judaism, the text in Luke is hyperbolic. As presented in the Mishna and Talmud, Jewish law holds that if there is even a doubt as to whether the robbed man was in mortal danger, then *halakha* imposes a duty to rescue, and even the High Priest or the most respected rabbi is commanded to drop everything to aid the distressed traveler.⁷⁷ Under Jewish law, virtually every commandment gives way to saving a life, and at this level, the Gospel seems to be a polemical exaggeration.⁷⁸

Despite this reservation, however, the gist of the Gospel's depiction of the rabbinic-lawyer is not wholly off-base. While the Talmud has no direct parallel to the Good Samaritan parable, a discussion in Tractate *Bava Metzia* understands the verses in Exodus chapter 23 and Deuteronomy chapter 22 as creating a duty to assist in rescuing or preserving another's *property*. Through the course of establishing the nature and scope of this duty, the Talmud brings up a number of considerations reminiscent of the Good Samaritan parable.

The Talmud understands two biblical passages as relevant to the duty to aid.

Ex. 23:5 provides:

5: If you see the ass of one who hates you lying under its burden, you shall refrain from leaving him with it, you shall help him to lift it up.

Similarly, Deuteronomy 22:4 provides:

4: You shall not see your brother's ass or his ox fallen down by the way, and withhold your help from them; you shall help him to lift them up again.

⁷⁶ See *Bava Metiza* 30; 32.

⁷⁷ See Talmud Sanhedrin 73a; Maimonides, *The Laws of Murder*, 1:14.

⁷⁸ See Talmud Sanhedrin 74a; Maimonides, *The Laws of the Foundation of the Torah*, 5:1-3.

The Talmud is initially bothered by two tensions between these verses. First, why does Exodus mandate the assistance of “one who hates you” while Deuteronomy legislates a duty to aid one’s “brother,” a discrepancy that may very well have spawned the lawyer’s question to Jesus, “who is my brother?” Secondly, the Talmud questions the repetition found within the biblical text; why are both verses needed? Proceeding under the standard rabbinic view, the Talmud finds that the Deuteronomy passage adds something not otherwise apparent in the Exodus text. The majority view concludes that while the Exodus passage refers to *unloading* the payload from an ox that has collapsed under its weight, the Deuteronomy verse mandates assisting the traveler in *re-loading* his animal in the event that the payload has fallen off. The Talmud refers to these duties as the “unloading” and “loading” duties, respectively.⁷⁹

The Talmud finds that the two acts do not implicate the same interests. While the loading obligation protects only the interests of the animal’s human owner, the unloading duty not only assists the owner but also takes interest in the animal’s welfare as well (by literally getting the load off its back). The Talmud concludes that while unloading (which aids both man and beast) must be done for free, a Good Samaritan can demand payment for his assistance in reloading the payload onto the animal’s back.

The Talmud then moves to consider several limitations to this duty. For example, the obligation does not attach if the accident is more than roughly one mile away from the would-be Good Samaritan.⁸⁰ Additionally (and here we sense echoes of Jesus’ rebuke), a *kohen* (priest) is exempt from the commandment if assisting would require him to become ritually impure (i.e. by walking through a graveyard).⁸¹ Likewise (again hearing echoes of Jesus’ parable), a distinguished person, for whom “it is not fitting with his dignity” to get down and dirty and load beasts of burden (*i.e.* that he would not do the same where his own property is at risk), is similarly relieved of the duty to aid, though

⁷⁹ See Talmud, Bava Metzia 32a-b.

⁸⁰ *Id.* 33a.

⁸¹ Talmud, Bava Metzia 30a

the Talmud suggests that a respected elder should go beyond the letter of the law and offer assistance regardless.⁸²

Having laid out basic rules, the Talmud moves into an even more analytic mode and queries the root issue behind the Bible's duty to aid: is it solely predicated on man's responsibilities toward a fellow man, *i.e.* towards the animal's owner, or does it also include an element of concern for the animal's well being, which would require one to assist an animal in distress even in the event that human distress/loss is not at issue?⁸³ The Talmud looks to resolve this issue, which is relevant to the downstream application of the loading/unloading obligation, by investigating the legal principles embedded in prior authoritative rulings.

This simplified sketch of the Talmudic dialogue opens a window into its discursive mode. As in the Shabbat example, the Talmud examines the rules of the loading/unloading command looking to define the scope and nature of the obligation. When does it apply? How does it apply? Can one seek payment for services rendered? And to what degree must one sacrifice his own welfare for the assistance of others? Finally, like the classical common law, the Talmud looks to use abstract legal principles from the existing materials in order to resolve novel and hard cases.

With the Talmudic discussion in the background, we return to the Good Samaritan story. The lawyer's question obviously elicits a negative reaction. But why? Isn't at least some version of the lawyerly discourse necessary? In order to apply the "love your neighbor" principle to concrete factual scenarios, further elaboration is undoubtedly required. Moreover, were a devout Christian to go to his pastor or priest and say, "I cannot afford to put up the robbed wayfarer for two months in a hotel" or, "What if I will be endangered by going down to the ravine (or stopping the car late at night in a questionable area of town)?" or, "Should I save the money for my child's college fund,

⁸² Talmud, Bava Metzia 30a and commentaries ad loc. *See also* Shulkhan Aruch, Hoshen Mishpat 263:3 and 272:3.

⁸³ Talmud, Bava Metzia 32a-b.

tithe to the church, pay my home mortgage or pay the stranded traveler's hotel bill?"
Certainly these questions would not be deemed insincere?

No doubt, a perspective grounded in the Gospels would almost certainly have little patience for the Talmud's priestly prerogative (later abolished in Jewish law), or for the exemption given to the elder statesman for whom loading up animals is thought to be beneath his dignity. Moreover, Jesus would have probably found the Talmud's distinction between loading and unloading overwrought, and most likely would cringe at the suggestion that one can demand payment for the "loading" half of the Good Samaritan duties (which could lead to some interesting behavioral law-and-economics research as to whether people are more likely to offer assistance under the Talmudic or Gospel view). But eventually, in one way or another, some prudential calculus must occur. Each believer must assess how much of a sacrifice, in terms of both personal safety and financial commitment, is mandated by the divine command. Why then the hostility to the lawyer's question?

I do not take Jesus' opposition to be directed so much to the lawyer's question as to the discursive mode the lawyer inhabits. The command to love cannot be reduced to rules or to a dry and technical discourse. By rulifying, reifying and legalizing the command, Jesus finds that the lawyer/Talmudist misses the point, for his mode of inquiry invariably focuses on the legal limits of what one *must* do for the other rather than the unlimited scope of what one should *want* to do. At the point of application, Jesus would most likely agree that some of the legalistic considerations must be taken into account. But the point of the Good Samaritan parable is that at the fundamental level, one must overcome the boundaries that naturally exist between one person and his fellow man so that the discourse of law gives way to the discourse of love. The lawyer's question, according to Jesus, leads the lawyer to consider his own material, personal, ritual and hierarchical status, allowing him to ignore the human pain and suffering lying directly at his feet.

Generalizing a bit further, Jesus fears that as the lawyer wades knee-deep into the legal details, he inevitably loses sight of the law's initial and ultimate objectives. The experience of many legal systems readily confirms that this suspicion is more than warranted.⁸⁴ Rules are, by definition, both over and under inclusive. Therefore, strict fidelity to the law can lead to results which subvert the original idea standing behind the biblical mandate.⁸⁵ Moreover, since the thrust of the discourse is oriented more towards doctrinal and technical precision than the human dimension of the issue, Jesus fears that the process of Talmudic interpretation leads to what the modern critical theorists might call the dehumanizing effect of the legal discourse.⁸⁶

Needless to say, the Talmud disagrees. At the most basic level, since the biblical commandments embody God's will, the Talmud assumes that it must know exactly what God commands and when that duty is satisfied. Even more important, however, is the Talmudic assumption that rulings on narrow points of law are embedded with further meaning that can be extracted via the legal/analytic process. Therefore, even if the case of choosing between helping the enemy load or the friend unload never arises under the clinical parameters described in the Talmud's precedential text, this hypothetical case assists later Talmudists in determining whether the law includes a principle of animal rights. The technical debates, and the Talmud's near endless stream of law school-style hypotheticals, are all part of the data set from which further legal propositions are either proven or rejected. It is only through this inherently legal discourse that the Talmud is able to formulate guidelines regarding the extent of the Good Samaritan principle, the justifiable reasons to refuse aid and when restitution can be demanded for services rendered. Thus, no detail is too arcane or specific to be considered within the Talmud's meandering dialogue.

⁸⁴ See, e.g., S.F.C. Milsom, Reason in the Development of the Common Law. 81 LQR

⁸⁵ See .e.g. RESPONSA HAVOT YAIR § 191 and RESPONSA RIDBAZ Vol 2 § 728 who interpret the Bible's duty to aid narrowly and technically. These authorities maintain the the duty applies only to the loading and unloading of *animals* but does not impose a general obligation to assist *persons* in distress. *But see* RESPONSA RASHBA §252 and 256 who rejects and RESPONSA YEHAWE DA'AT Vol 5 § 65 who collects numerous authorities that reject this approach.

⁸⁶ See, e.g., Robert Gordon, *Unfreezing Legal Reality: Critical Approaches to Law*, 15 FLA. ST. U. L. REV. 195 (1987).

While the Talmudic approach invariably produces a denser and more differentiated legal architecture than favored by Jesus, the Talmud uses the loading/unloading as archetypal categories to sort out the tension between altruism and individualism which lies at the core of every duty-to-aid scenario. The unloading requirement (which must be done *gratis*) gives expression to the purely altruistic ideal, while the loading command balances this with individualism, and allows the Good Samaritan to demand payment for services rendered (mandating nevertheless that aid be offered). The dense and technical discourse of unloading and loading establishes the boundary line between Man's obligations to himself and his brother.

IV. The Role of Law in Religious Consciousness

The pattern identified between Jesus and the rabbis in the Shabbat and Good Samaritan examples resonates throughout both the Jewish and Christian canon. While Jesus accuses the rabbis of worrying how to tithe mint, dill and cumin while forgetting the weightier matters of the law,⁸⁷ the Mishna proudly discusses the intricate details of tithing including under which situations “savory, hyssop and thyme” are deemed *food* and thus subject to the laws of tithing.⁸⁸

Moving beyond the Gospel texts, regarding prayer the Didache records the Lord's Prayer and simply instructs that each believer should “Pray this three times each day.”⁸⁹ The Mishna also rules that prayers should be said thrice daily, but it immediately suggests differentiation as to both the timing and content of the morning, afternoon and evening prayers. Thus, the Mishna debates whether morning prayers can be recited “until

⁸⁷ Mathew 23:23 (“Woe to you, scribes and Pharisees, hypocrites! for you tithe mint and dill and cummin, and have neglected the weightier matters of the law, justice and mercy and faith; these you ought to have done, without neglecting the others”).

⁸⁸ Mishna, Maaserot 3:9.

⁸⁹ Didache Chapter 8, available at <http://www.earlychristianwritings.com/text/didache-roberts.html>. “Didache is that part of the gospel teaching directed toward ethical instruction and guidance in Christian practices, such as spiritual disciplines, rituals, organization, and practical problems. Didache is also the title of one of the earliest church documents, designed to prepare gentile Christians for membership in the church.” HARPER'S ENCYCLOPEDIA OF RELIGIOUS EDUCATION 189 (Iris V. Cully and Kendig Brubaker Cully eds., 1990).

noon”, or in the opinion of Rabbi Judah, “until the fourth hour.”⁹⁰ The Talmud seemingly cannot keep itself from asking, “does Rabbi Judah mean until the beginning of the fourth hour, or until the end of the fourth hour?”⁹¹ And so the Talmudic wheel goes round and round.

We might also consider the example of baptism/*mikva* rituals. Both traditions contemplate the idea of a spiritual transformation and purification via immersion into a pool of water. The New Testament view, which forms the basis of further Christian interpretations, is fully theological in tone. The Book of Acts speaks of baptism in terms of forgiveness of sin and participation in the Holy Spirit.⁹² Paul similarly stresses how baptism creates a spiritual bond between the believer and Jesus,⁹³ and allows for “rebirth and renewal by the Holy Spirit.”⁹⁴ Perhaps even more suggestive for our purposes, Paul understands that those who have been “baptized into Christ” are no longer subject to the discipline of the law.⁹⁵

Moreover, even the Didache, generally considered the most legalistic of the early Christian texts, says rather little about the baptismal process. The text’s overall message is that the ritual technicalities should not interfere with the process of spiritual conversion; it’s the conversion of the heart that matters most.⁹⁶

In contrast to Paul’s theological discourse, the Mishna deals with the question from a decidedly legalistic perspective. The ten technical chapters of Mishna Mikva’ot address nearly every question that an imaginative lawyer might direct at a rule requiring immersion in a pool of water (what counts as *immersion*, what defines *in*, what qualifies as a *pool*, and what constitutes *water*?). Yet, despite the Mishna’s prolixity, nowhere in the entire tractate does the Mishna contain anything that matches the theological issues

⁹⁰ Mishna Berakhot 4:1.

⁹¹ Talmud, Berakhot 26a-b.

⁹² Acts 2:37.

⁹³ Colossians 2.11-13.

⁹⁴ Titus 3.5.

⁹⁵ Galatians 3.23-29.

⁹⁶ Didache Chapter 7. (“[B]aptize into the name of the Father, and of the Son, and of the Holy Spirit, in living water. But if you have no living water, baptize into other water; and if you cannot do so in cold water, do so in warm. But if you have neither, pour out water three times upon the head. . .”).

that interested Paul. This tendency becomes even more pronounced in the Talmud, where Mishna's ruling, regarding one who immersed in a pool that was later found to lack the requisite amount of water, becomes an abstracted legal principle that travels across several substantive fields of law. The Talmud interprets this case as a precedent relevant to determining the scope of evidentiary presumptions, permitted inferences and circumstantial evidence and establishing the burden of proof.⁹⁷ What this has to do with the ritual/spiritual transformation accomplished by the *mivka* ritual is far removed from the Talmud's mind.

These differences are similarly expressed in terms of the role of law within the relevant religious consciousnesses. The most dramatic expression emerges from a Talmudic account of the workings of the celestial retinue. The Talmud describes a rabbinic disagreement regarding some particular details of the skin affliction detailed in Chapter 13 of Leviticus (which is commonly translated as leprosy). While the question at issue is fairly typical of the Talmudic debate, the disputants are certainly not.⁹⁸

They were arguing in the Academy of Heaven:
 If the discoloration of the skin preceded the white hair
 He is impure;
 If the white hair preceded the discoloration of the skin
 He is pure.
 If there was doubt as to which came first:
 The Holy One, blessed is He, says he is pure;
 While the rest of the Academy of Heaven says he is impure.
 They asked: "Who will adjudicate this issue?"
 It was decided that Rabba b. Nachmani
 Who had singular knowledge of this area of the law
 Would come to resolve the debate.

One could scarcely imagine a more Talmudic, and less Christian, description of the divine. First, there is an "Academy of Heaven" which apparently sits around debating the finer points of Jewish law just like the Talmudic academies down below. Moreover, God himself participates in this debate, not as the arbiter/judge, but as a litigant! Finally,

⁹⁷ Talmud, Nidda 2b.

⁹⁸ Talmud, Bava Metiza 86a.

God himself must submit to the expertise of the Talmudic sage whose knowledge of the law is called upon to settle the dispute between God and the angels.

This is certainly not the only depiction of God to be found within Jewish literature, as God more typically assumes the adjudicative role. But the fact that such a description of God is even possible speaks volumes to the role of law within the Talmudic and Jewish experience. And despite the multifaceted nature of Christian theologies and cosmologies, it is difficult to imagine a portrait of God debating the finer points of law with his ministering angels emerging from Christendom.

In a similar vein, while Christians debate the relative merits of faith versus works, the Talmud debates which is paramount: works or the study of Torah. While the “works” half of each equation remains constant, in Christianity works stand in opposition to faith,⁹⁹ while in the Talmud, they stand in opposition to the lifelong commitment to the study of the law.¹⁰⁰

Several related distinctions are also relevant. Broadly stated, theology is the occupation of Christian scholars. Many Christian universities have departments and chairs of theology, and scholars working within the Christian tradition broadly conceive themselves as engaged with theological issues. There is, however, no word for theology in the rabbinic/Talmudic lexicon. A religious scholar, by contrast, is known as a *talmid hakham*—a term that has no parallel in the English language (or in Christian thought) and is best translated as “a scholar of the law.” Thus, when a *halakhic* Jew seeks guidance from his rabbi, he conceptualizes himself as asking the rabbi a legal, rather than theological, question. The rabbi, in turn, formulates his response—much as a lawyer does—by reasoning through the relevant provisions with the Talmud, legal codes and *responsa* (Jewish case law) literature. And even when the issue draws on the rabbi’s role as a moral and spiritual guidance counselor, competency to address such issues is

⁹⁹ Galatians 2:16.

¹⁰⁰ See Talmud Kiddushin 40b.

understood to flow from the rabbi/*talmid hakham*'s ability to see the issues from the perspective of Jewish law.

Further, rabbinic Judaism does not understand law to be the specialized discourse of the select few. *Halakha* expects that each Jew, including the wood chopper and the water carrier,¹⁰¹ set aside time every day to study Torah and gain proficiency in the *halakhic* literature. It is quite common for groups of laymen to come together several times each week and struggle over recondite Talmudic texts. The congregation's comfort with legal ideas trickles down to many areas of synagogue life. For example, it is not at all uncommon for a rabbi to begin his sermon saying: "Last week one of you came to me and asked me the following: Initially, I thought *A* based on Talmudic passage *Y*. Then I saw the comments of *Z*, which made me think *B* was the more correct approach. I then realized that in truth the answer to this question depends on the well known debate between Rabbi₁ and Rabbi₂ in source *W* (which initially seems unrelated to the question at hand)."

I suspect that even to the most legally oriented Church community this degree of verisimilitude with the substance of religious law is inconceivable. There are certainly scores of rather exhaustive rulebooks and codes governing Christian doctrine and practice. But there is a vast difference between having many rules, and the Talmudic worldview which elevates the study, analysis and immersion in the "sea of the Talmud" to the center of religious observance. Similarly, the Talmudic tradition has also talked about Shabbat and *mikva* in tones that are reminiscent of the messages stressed by Jesus and Paul. But this does not mitigate the fact that the Talmud examines these issues in a way contrary to the central messages of Jesus' teachings. Whether measured by the intricacy of legal analysis, the diffusion of legal knowledge and skills amongst the populace, the range of issues thought to be justiciable within the normative bounds of the legal system or the contact points between the parishioner-layman and the law, it is clear that these two religions have very different understandings about the extent of the law's empire.

¹⁰¹ Deuteronomy 29:11.

V. Conclusion

In the past, attempts to discuss the Talmud in light of Church texts and doctrine have ended rather badly, at least for the Talmud.¹⁰² For this and other reasons, I do not take a stand on which is the better method of law, anymore than I will attempt to decide which is the better religion (also a question that historically has not ended well for Jews). Each mode of legal thought comes with a predicable set of pros and cons, and comparative analyses of the New Testament and Talmudic material further confirms this view. The virtues of the rabbinic/lawyerly view are thought to be predictability, authority and objectivity. But the constant fear is that rules are under and over inclusive and often miss the boat, or as Paul would have it, the letter kills. Thus, the frequent—and not altogether unfair—critique of Talmudic Judaism, and of conventional legalism more generally, is that it gets so concerned with the legal minutia and the details of the legal directives that the overall purpose of the laws (or The Law), i.e. its justice, gets lost in the shuffle.

The contrary position has its drawbacks as well. This view of law is typically faulted for giving too much discretion to the ultimate decisionmaker which leads to haphazard, self interested and even corrupt application of the law. As more than one pastor has lamented, the route from Jesus' "Man is Lord over the Sabbath" to Sabbath is "doing what makes me happiest" turns out to be a short one indeed, and much of the criticism of the living constitutionalist's Due Process jurisprudence has a similar argumentative architecture.

Pros and cons aside, the analysis suggests several conclusions about both Jesus' and the rabbi's conception of law.

¹⁰² See, e.g., Chen Merchavya, *THE CHURCH VERSUS TALMUDIC AND MIDRASHIC LITERATURE 500-1248* (1970) (Hebrew); David Berger, *THE JEWISH-CHRISTIAN DEBATE IN THE HIGH MIDDLE AGES* (1979)

First, comparative reading of the sources suggests that Jesus and his early followers had a set of ideas that can legitimately be identified as comprising a legal theory. Though this is not the type of theory that dictates certain outcomes in every case (but which legal theory does?) it is a set of related interpretive proclivities and jurisprudential assumptions regarding the nature of legal rules and texts and the advisability of refracting social questions through the legal framework. In the early centuries of the common era, Judaism and Christianity parted paths over how to read the biblical verses and the degree to which biblical directives should be subjected to formalization and legalization. And, despite important counter examples (e.g., *aggadah* and *kabbalah*, medieval philosophy and liberal/reform movements on the Jewish side; the Scholastics, Calvinist Geneva, Puritans and Catholic moral theologians and ethicists on the Christian side), echoes of this early debate can be felt throughout the ages. Finally, these differences extend beyond the early theological debates regarding the ongoing relevance of the Torah's rules. While Jesus' approach to the biblical directives is undeniably predicated on his understanding of Man's relationship with God, it has implications for Man's encounter with his fellow Man as well. Jesus and the rabbis staked out opposing positions that later centuries would discuss in terms of legal theory.

This leads to my second concluding point. Despite the recent uptick in writing by legal academics regarding religion (particularly Christianity) and law, I am unaware of any writer who has framed the Christian contribution to *legal* thought in terms of the victory of the Spirit over the Letter. As mentioned at the outset, at least from the Talmudic perspective, Jesus' relationship to law is at the very core of his ministry—an impression only strengthened in the Pauline epistles. But because the “law and theology” discussion has largely ceded the definition of “law” to the theologian, the perspective of the lawyer is underrepresented in these discussions, an impression confirmed by *The Teachings*, *Christian Perspectives* and *Faith and Law*. In-line with the theme of this paper, I suggest the de-legalization of the Christian religious consciousness has been so successful that contemporary inhabitants of this tradition have difficulty recognizing that the early Church was grappling with issues that squarely implicate the central questions of legal theory and interpretation. Thus, even while in the past generation or so New

Testament scholars have returned to consider Jesus' Jewish roots, there has been no corresponding movement focusing on the jurisprudential implications embedded within these foundational texts.¹⁰³

By bringing the Talmudic tradition back into this conversation, I hope to expand the discourse on law and religion, and particularly, the relationship between law and theology. Theological commitments obviously influence the law at the grand level of the constituent nature of the church and state, questions of death penalty and medical ethics, the eternal discussions of natural law and capital “J” Jurisprudence—all of which fall into the usual corners of the law and religion discourse.¹⁰⁴ But there is another dimension which speaks to the framing of legal issues: the level of generality that applies to a legal analogy, the relative appetite for rules over standards, the line between factual and legal questions and, perhaps most significantly, the desirability and consequences of refracting difficult social questions through the legal prism. Even more provocatively, we might wonder whether the discourse of legal constructs and lawyerly arguments sufficiently legitimates the coercive practices of individual man or collective government carried out under its banner. By adding these issues into the mix, we locate more common ground between legal and religious discourse, and enrich our understanding of how religious commitments are translated into legal arguments and policy preferences.

This leads to the third concluding point. Paul was certainly correct to realize that a central dichotomy divides the jurisprudence of **letter** from that of **Spirit**. While the terms of this debate have shifted over the centuries, the core dichotomy between the letter and spirit has been a focal point of jurisprudential debate over the history of legal thought. In each of the following sets of oppositional terms, letter jurisprudence resonates with the right, while spirit jurisprudence resonates with the left.

Left

Right

¹⁰³ E.g., E.P. Sanders, *JESUS AND JUDAISM* (1987); E.P. Sanders, *PAUL, THE LAW AND THE JEWISH PEOPLE* (1985). See also *EARLY CHRISTIAN THOUGHT IN ITS JEWISH CONTEXT* (John Barclay and John Sweet eds., 2003).

¹⁰⁴ See Skeel *supra* note.

Substantive justice	Procedural justice
Equality of outcome	Equality of opportunity
Fairness ex post	Fairness ex ante
Equity	Law
Justice of the case	Rule of law
Living interpretation	Originalism / Textualism
Substance	Form
Legal functionalism	Legal formalism
Purposive interpretation	Grammatical interpretation
Standards	Rules
Context	Text

Presented at this level of generality (which invariably runs roughshod over many specifics and particulars), it seems accurate to talk about Jesus' legal theory as embodying those positions associated with the left, while the rabbinic texts sway towards right. While this organization may be intuitive to the reader of the Bible, Gospels, Epistles, Acts, Mishna and Talmud, it runs contrary to the dominant representation of Jesus' values and legal theory in contemporary American law and politics.

In the current political landscape, Jesus' legacy is most commonly associated with the rule of law, limited role of judges, rules over standards, text over context and procedural rather than substantive fairness. While these commitments are expressed most vociferously in the context of constitutional interpretation, they extend to the reading of statutes, and all the way down to the reasoning employed in ordinary criminal and commercial cases. It is no small irony that groups who champion Jesus align themselves more closely with the interpretive project of the Talmudic rabbis than with Jesus' approach to both the Law of the Torah and law more generally. Similarly, those most likely to deny that Jesus has anything to teach us about American law may inadvertently be bearing witness to Jesus' conception of law.

I do not mean to advocate that every Christian must adopt the interpretative commitments that we might characterize as *Spirit*, any more than every Jew must become a strict adherent of *Letter* jurisprudence. Religious traditions are far too diverse and complex to produce such a simple one-to-one ratio, and in any event these questions are further refracted through religious traditions and other theological and philosophical commitments. Moreover, there are many reasons to think that reading the Bible is different from reading a statute, and why the right approach to eternal Divine law is, and should be, different than the approach to the temporal law of Man. Jesus himself argued that certain areas are “rendered unto Caesar,”¹⁰⁵ and in the centuries since Jesus, Christian thinkers have expanded upon this distinction considerably.

But there are also compelling reasons to think that these interpretive enterprises are similar. Both involve the search for meaning and truth within ancient sacred and quasi-sacred texts, which require translation and interpretation in light of shifting legal and cultural meaning. Both deal with how individuals and societies are governed by the specific rules and general commands of a sovereign yet distant author.

Moreover, throughout his ministry, Jesus issues challenges to both the existing spiritual *and* temporal orders. When Jesus criticizes the Pharisees for wanting to stone the adulteress,¹⁰⁶ when he challenges the priests and scribes over their administration of the Temple,¹⁰⁷ or when he expresses solidarity with the sinners and tax collectors,¹⁰⁸ Jesus is engaged in acts of both “religious” as well as “political” dissent. Like the rabbinic writers, the Gospel authors found the distinction between the temporal and the spiritual realm far less real or relevant than us moderns imagine. While the theology of two separate Kingdom’s or spheres would later feature prominently in Christian theology, the dichotomy was of far less important to Jesus and his first century audience.

¹⁰⁵ Mathew 22.21.

¹⁰⁶ John 8: 1-11.

¹⁰⁷ Mark 11:15–19; Matthew 21:12–17; Luke 19:45–48.

¹⁰⁸ Mark 2:13-17. See also Matthew 9:9-13 and Luke 5:27-32.

Finally, the operating premise of many of the Christian legal theories is that the Bible, (and Jesus' teachings in particular) are relevant to contemporary debates in law, policy and politics.¹⁰⁹ Particularly in its Protestant iterations, Christian legal scholarship looks to extract lessons from the biblical and apply them in both the personal and political domains. Thus, on its own terms, Christian legal theory assumes that Jesus' teachings are, at least in part, designed to teach proper conduct in the administration of law and justice in the earthly, temporal realm.

The attempt to create a composite of Jesus' and rabbinic approaches to law necessarily elides a host of complicated historical, methodological and theological issues. The problem only gets worse as we extend the project from Talmudic to Jewish and from Jesus to Christian. But this is exactly why the comparative perspective proves its utility. Comparative readings draw attention to the salient and distinguishing features of each discursive community. To argue that Judaism is law-obsessed begs the question, as opposed to what? But if we argue that, as contrasted to the treatment of analogous material (the Gospels, Epistles and Didache), the Talmud is consistently attracted to the legal implications, the liminal cases and law school styled hypotheticals, then the comparative analysis has done its job and the conclusion is easier to prove and sustain.

This paper examines how two traditions confront shared source material. What questions are raised, and what answers are given? What issues stand at center of the conceptual and intellectual universe? The debates between Jesus and the rabbis are not haphazard. They reflect a consistent set of systemic differences regarding the interpretation of biblical texts and formulation of legal traditions. Long before the New

¹⁰⁹ See e.g., W. Burlette Carter, *What's Love Got to Do With It? Race Relations and the Second Great Commandment* in CHRISTIAN PERSPECTIVES OF LEGAL THOUGHT (McConnell et. al. eds.); Thomas L. Shaffer, *The Radical Reformation and the Jurisprudence of Forgiveness* in CHRISTIAN PERSPECTIVES OF LEGAL THOUGHT (McConnell et. al. eds.); John Copeland Nagle, *Christianity and Environmental Law* in CHRISTIAN PERSPECTIVES OF LEGAL THOUGHT (McConnell et. al. eds.); Catherine M. A. McCauliff, *A Historical Perspective on Anglo-American Contract Law* in CHRISTIAN PERSPECTIVES OF LEGAL THOUGHT (McConnell et. al. eds.); Joseph G. Allegretti, *Can Legal Ethics be Christian?* in CHRISTIAN PERSPECTIVES OF LEGAL THOUGHT (McConnell et. al. eds.); William Stuntz, *Christian Legal Theory*, 116 Harv. L. Rev 1707 (2003); Robert F. Cochran, *Evangelicals, Law and Abortion* in FAITH AND LAW: HOW RELIGIOUS TRADITIONS FROM CALVINISM TO ISLAM VIEW AMERICAN LAW.

Deal, the administrative state, judicial review, the drafting of the American Constitution, early modern debates over natural and positive law and even the Magna Charta, Jesus and the rabbis parted paths over the fundamental questions that are continually debated contemporary legal theorists.