

“Others-in-Law”: Legalism in the Economy of Religious Differences

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Abstract

Religious legalism encompasses a wide range of attitudes that assign religious meaning to legal content or to legal compliance. The phenomenology of religious legalism is assuming a significant role in various contemporary debates about legal pluralism, accommodation of religious minorities, religious freedom, and so forth. This article revises this conception and the commonplace equation of Judaism and legalism. It suggests that we ought to regard both as part of the economy of religious differences by which religious identities are expressed and defined as alternatives. The common ascription of religious legalism to Judaism (and Islam) is criticized here through a historical analysis of the *law-religion-identity* matrix in three cultural settings: late ancient Judeo-Hellenic, medieval Judeo–Arabic, and post-Reformation Europe.

Keywords

religious legalism, Judaism, Christianity, nomocentrism, reformation, Martin Luther, Maimonides, Mendelssohn, torah-nomos, identity politics, law-gospel, identity

The interplays between law and other realms seem less synthetic since the traditional conception of law as “an independent realm of logic” and “a system of interdependent definitions”¹ has been challenged. Thus, jurisprudential trends and movements throughout the second half of the past century not only splintered the traditional legal theory but also extended the prisms through which law was viewed, studied, designed and criticized. Nevertheless, post-positivists jurisprudential attitudes still incline to employ a

1. Boorstin (1996: 123). Interestingly, the refutation of legal indeterminacy by pragmatism and legal realism also encouraged the demystification legal independency.

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two-dimensional approach that focuses on a single factor or realm that is crucial to the apprehension of the law and its operation – economics, social powers and mechanisms, gender and race differences etc. Although not claiming an exclusion of other jurisprudential accounts, modern and post-modern legal theories do not include synergic methods and multi-dimensional approaches.

Against this backdrop, we argue below for viewing the conception of “religious legalism” as a three-dimensional matrix (law-religion-identity) that is inseparable from the history and the politics of identities. We advocate historical outlook on the idea of “religious legalism” which calls to reconsider some aspects of the relations between law and religion, together with the questioning of some conventions of the phenomenology of religions. It is argued that “religious legalism” has much more to do with identity politics, rather than conceptual analysis of jurisprudential and theological ideas; it should be viewed as the product of crucial moments and constructive rifts through the history of the Jewish-Christian symbiotic relations.

Notwithstanding the predications of the Enlightenment, world religions have failed to vanish from the public sphere and in fact continued playing a crucial role in public reasoning even in most secularized societies. Despite any number of endeavors to equally protect freedom of religion and freedom from religion, the neutrality of the state in this regard and the separation of law and religion – if feasible at all – nowadays seem much more complicated and challenging than anticipated.²

A divide between law and religion was embraced and encouraged by both constitutive movements of Western modernity, namely, the Reformation and the Enlightenment.³ In this respect, the rapidly accelerating academic study of law and religion can be fairly described as a revision of modern ideals based on the separability of law and religion. Contemporary academic studies in the field of law and religion are developing along three trajectories, each of which rests on a different set of presumptions and aims. The first – the counter-separatist trend – seeks to unveil the ideological and theological biases and the conceptual deficiencies of separatist presumptions and emphasizes affinities and similarities between law and religion in both form and content. Contrary to the separatist perspective, counter-separatists stress the intrinsic interconnections, interplays, and interdependencies of law and religion as realms of normativity and sources of meaning. Clearly, this trend lends itself to agendas that would establish collaborative relationships

2. Contemporary commentaries reflect an evident internalization of the various critiques of the category of “religion.” Consequently, the traditional understanding of religious freedom as protection of belief and consciousness is intensely criticized and revised. Among this vast literature, see: Sullivan et al. (2015); Ahdar and Leigh (2015); Sharma (2012); Sullivan (2005); DeGirolami (2013); Smith (2014).

3. This distinction reflects the Lutheran reformation of the “traditional hierarchical theory” (vertical framework) into a model of two distributed kingdoms (horizontal framework). Accordingly, heavenly and earthly realms are parallel, dependent but distinct, and the Christian is a citizen of both kingdoms at once and invariably under the discrete control of each. See: Witte (2004: 5–9). Mark Lilla argues that the Western “Great Separation” of religion and law was a product not only of Reformation theology, but also of the Enlightenment’s secularist arguments. See: Lilla (2008).

between law and religion and to pastoral elocutions about the harmony that unites them.⁴ A second trend, a regulatory one, focuses on constitutional interfaces of law and religion and is thus concerned with protection of religious praxis and behavior. It incorporates a range of efforts to standardize and equilibrate religious concerns and interests vis-à-vis other social and political matters. Meanwhile, a third trend, which takes issue with criticism of religion as a neutral and universal category,⁵ is characterized by greater sensitivity and novel perspectives on legal affairs, imagery, and reflections within religious traditions and experiences. Overall, these trends not only enrich the fields of study, but have also inspired profound theoretical revisions of traditional conventions and presumptions based on the separation of law and religion as distinct, independent realms.

This article seeks to identify a further aspect of the separation of law and religion through a genealogical inquiry into the conception of “religious legalism.” It endorses the view that the disparateness of law and religion is not only a product of ideals emerging from Reformation theology and the Enlightenment, but also driven by a discourse that deeply links identity and epistemology, and consequently correlates a distinction between “us” and “them” with the distinction between “genuine” religion and other manifestations of organized religion that wrongly overvalue law and legality, i.e., engage in religious legalism – a viewpoint that belongs to the realm of the politics of identities.

The phenomenology of religious legalism, so it appears, is assuming a significant role in various contemporary debates about legal pluralism, accommodation of religious minorities, religious freedom, and so forth.⁶ It is therefore worthwhile to comment on this approach and its coherency from an emic perspective. The following analysis wrestles with the notion of religious legalism and its meaning as a concept and as a heuristic category in the study of law and religion. Our basic inquiry is: How are we to understand the idea of religious legalism within the modern discourses that gave rise to the separation of law and religion?

1. Religious Legalism Revised

The conception of religious legalism encompasses a wide range of attitudes that ascribe religious meaning to legal content or to legal compliance. Indeed, the conception of religious legalism is a central axis of the Western metanarrative about the differences

4. Harold Berman, an eminent and pioneering figure in the study of law and religion, articulated this trend as a “reconciliation of law and religion.” In the Jewish and Islamic traditions, the reconciliation of law and religion also manifests the revival of a presumed primal unity of both reflected by a single signifier – *dat* (דָּת) in Hebrew, and *din* (دِين) in Quranic Arabic – concurrently denoting both law and religion.

5. Asad (1993).

6. Assertions of a phenomenology of religious legalism are not always explicit, but nonetheless pivotal in many debates. For example, the core argument of Rowan Williams’ seminal and provocative address rests on the, cautiously articulated, observation that some religious minorities (i.e. Muslim and Orthodox Jews) are in fact “communities that, while no less ‘law-abiding’ than the rest of the population, relate to something other than the British legal system alone.” (2008: 262).

between scriptural religions, mainly between Christianity, on one hand, and Judaism and Islam, on the other. Opposition to legalism, or at least criticism of it, thus is an essential part of Protestantism as compared to other religious ways, such as Judaism, Islam, Roman paganism, and Catholicism. A tangible depiction of the Christian message as principled antithesis to religious legalism is provided by Friedrich Nietzsche, one of the most critical commentators on Western religious traditions and civilization, who sarcastically describes Christ's death as an illusion of liberation from the law:⁷

The law was the Cross on which he [i.e., Paul] felt himself crucified. How he hated it! What a grudge he owed ... For from that time forward he would be the apostle of the annihilation of the law (*Lehrer der Vernichtung des Gesetzes*)! To be dead to sin – that meant to be dead to the law also; to be in the flesh – that meant to be under the law! To be one with Christ – that meant to have become, like Him, the destroyer of the law; to be dead with Him – that meant likewise to be dead to the law. Even if it were still possible to sin, it would not at any rate be possible to sin against the law: “I am above the law,” thinks Paul; adding, “If I were now to acknowledge the law again and to submit to it, I should make Christ an accomplice in the sin”; for the law was there for the purpose of producing sin and setting it in the foreground, as an emetic produces sickness.

Nietzsche insists on portraying Pauline Christianity as not a positive new soteriological message, but oppositional religion: a protest against problematical moral life “under the law,” an outcome of the threefold nexus of sin, flesh, and law. Nietzsche situates the Pauline detection of an intrinsic interconnection of sin, flesh, and law within the very essence of Christianity, which is justifiably depicted as an antinomian religion. Nietzsche's emphasis on the law–sin complex presents Christian religion as systematically disapproving of the morality of legalism, a view later embraced by political theologians who accentuated the political aspect of the Christian reaction to legalism. Jacob Taubes (1923–87), for instance, views the birth of Christianity primarily as political transvaluation:⁸

... it isn't *nomos* but rather the one who was nailed to the cross by *nomos* who is the emperor! This is incredible, and compared to this all the little revolutionaries are nothing. This transvaluation turns Jewish–Roman–Hellenistic upper-class theology on its head, the whole mishmash of Hellenism ... transvaluation of all the values of this world. There is nothing like *nomos* as *summum bonum*. This is why this carries a political change; it's explosive to the highest degree ... The critique of law is a critique of a dialogue that Paul is conducting not only with the Pharisees – that is with himself – but also with his Mediterranean environment.

Naturally, the view of Christianity as an anti-legalist religion is accompanied by an image of the Jews as living “under the law” and Judaism as a law-based religion. Religious differences between these two symbiotic rival religions are thus only too easily

7. Nietzsche (2011: 48–9).

8. Taubes (2003: 24–5). Ansah (2009) rightly identifies the renewed interest in Paul's juridical thought as late modern, i.e., post-modern as well as postdating the secular trend.

summarized and reduced to the question of legalism, with Christianity embodying rejection of and liberation from legalism, and Judaism extracting adherence to the law. The question of legalism in this way became a matrix for Jewish–Christian religious differences, while the dichotomy of legalism and its diametric opposition, anomism, served in self-representations and the marking of religious “otherness.”⁹ In fact, the role that the question of legalism has played within the history of Jewish–Christian borderlines is an excellent example of the mechanism whereby external representation is internalized as self-identification.

Thus the emphasis on Christianity as opposition to legalism in turn upraised the perception of Judaism as a religion based on legalism, a perception that was well adopted and internalized by Jews themselves. Accordingly, the reduction of Jewish–Christian religious differences to the question of religious legalism became consensual even by those accused of living “under the law.” There is an apparent correlation between the intensification of the image of Christianity as an anti-legalist religion and Jewish apologetics on the religious value of legalism. Jewish reflections on religious legalism not only accept the depiction of Judaism as being “under the law” but also give theological and political meaning to the equation of Judaism and legalism.

Notable philosopher and scriptural scholar Moses Mendelssohn (1729–86) believed throughout his endeavors to promote Jewish civil rights that traditional Judaism could integrate in civic life without giving up the religious identity of the Jews and without losing their commitment to their religious laws.¹⁰ He believed in resolving the “Jewish problem” by disentangling the Jews’ tendency to preserve their legal insularity and the resultant suspicion that they were unfaithful citizens. He felt that full membership in society and loyalty to Jewish religious laws were reconcilable on the basis of a phenomenology distinguishing between state and religion, between civil laws (*gesetze*) and religious laws (*gebote*).¹¹ Unlike Spinoza, who described the laws of the Hebrews as political laws that had lost their validity upon the collapse of the Hebrew *politeia*, Mendelssohn insisted on the distinction between political and religious laws and determinedly rejected the voidance of the latter:¹²

In fact, I cannot see how those born into the House of Jacob¹³ can in any conscientious manner disencumber themselves of the law ... No sophistry of ours can free us from the strict obedience

9. On the important distinction between “otherness” and “approximate otherness,” see: Smith (1985).

10. Contrary to the endeavors of medieval Jewish thinkers who argued for harmonization of Jewish law with metaphysics, Mendelssohn espoused obedience to Jewish law in conjunction with the political values of liberty, tolerance, and citizenship.

11. “Here we already see an essential difference between state and religion. The state gives orders and coerces, religion teaches and persuades. The state prescribes laws (*gesetze*), religion commandments (*gebote*). The state had physical power and uses it when necessary; the power of the religion is love and beneficence.” Mendelssohn, *Jerusalem*, 45.

12. Mendelssohn, *Jerusalem*, 127, 133.

13. A biblical term for the Israelites.

we owe to the law; and reverence for God draws a line between speculation and practice which no conscientious man may cross.

The core of Mendelssohn's integrative vision rests on a phenomenological distinction between the political demands of the state and the requirements of religion, to wit, a distinction between different meanings of obedience and of being "under the law." While political laws are valid and have force even if they run contrary to the will and approval of the individual, the validity and enforceability of religious laws are entirely dependent upon intentional consent, empathy, and willingness to obey. Political laws therefore are essentially coercible and religious laws intrinsically voluntary and otherwise meaningless. In fact, Mendelssohn argues, political and religious laws are fundamentally incomparable, and using the equivocal term "law" in both contexts is misleading.¹⁴

In contrast to Mendelssohn, later Jewish thinkers dialectically idealized the concept of being "under the law" as indeed a peculiar trait of Judaism, but also one whose significance and meaning were translatable to general ethical, theological, and political discourse. Hermann Cohen (1842–1918) certainly is a paradigmatic representative of this trend. In his theory, the notion of "law," and more precisely "divine law," is understood as a communicative device between the deity and humanity that preserves monotheism and morality. As a Neo-Kantian,¹⁵ Cohen argues that the notion of law is intrinsic to morality because it postulates its precondition, that is, free individuality.¹⁶ To be "under the law" therefore means to be responsive yet fully submissive to one God.¹⁷ Cohen equated the notion of "law" with revelation and viewed it as a necessary

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14. This distinction surely parallels Kant's distinction between political and ethical laws: "A *juridico-civil* (political) *condition* [*Zustand*] is the relation of men to each other in which they all alike stand socially under *public juridical laws* (which are, as a class, laws of coercion). An *ethico-civil* condition is that in which they are united under non-coercive laws, *i.e., laws of virtue* alone." Kant (1960, 87).
 15. Kant himself wrestled with the Protestant imputation of Judaism as blind adherence to the law: "The idea of living 'under the yoke of the Law,' on the other hand, has served since the polemics of the Apostle Paul as the dominant allegation with which to goad, tease, and heckle Judaism; intended as a stigma, it evokes the rebuttal: does not the sacramental rite of the Eucharist in this sense exceed the danger of legal ritualism attributed conventionally to Jewish law? To be sure, our reservation related to the distinction between ethical judgment and ritual laws of religious worship remains. However, the former doubt weighs even more heavily: is ethics at all compatible with an ethical system based on religious service and on the awe and love of God?" Cohen (2004: 26–7).
 16. In this regard I follow Batmitzky's articulation of Cohen's position: "it is the scientific foundation of ethics ... [because] the norms of right create the possibility of ethics because they create the possibility of the free individual" (2006: 192).
 17. Cohen in fact elevated the existential condition of "living under the law" to an ethical ideal: man is to devote his endeavors to liberation from individuality (*i.e., his nature*), with the goal of becoming a *social* being, *i.e., a member of a state governed by law*: "God commands man, and man of his own free will takes upon himself the 'yoke of the Law.' The law remains a yoke. Even according to Kant's teaching, man does not voluntarily commit himself to the moral law, but has to subjugate himself to duty." Cohen (1995: 345).

vehicle for human beings to be God's addressees – "the law of God is a necessary concept in monotheism."¹⁸ Yet Cohen maintains the particular identification of Judaism with legalism and embraces the view that Judaism must remain an insular nomic religion:¹⁹

The continuation of Jewish monotheist religion is thus tied to the continuation of the law – in principle not in the details of individual laws: that the law makes the isolation possible which seems necessary for the care and development of one's Own as the Eternal (*des Eigenen als des Ewigen*).

The thought of Leo Strauss (1899–1973) furnishes another example of a Jewish self-understanding through typological religious differences based on the anomist–legalist dichotomy. Where Cohen celebrated the particularity of Jewish legalism as demonstrative of the basic principle of morality, Strauss took it as a peculiar religious form-of-life predicated on a different perception of the relationship between thought and social life. Strauss' point of departure is a statement of the irreconcilable opposition between philosophy and revelation, theology and law. He blames medieval Christendom for replacing the Jewish understanding of revelation as divine law with a synthesis of revelation and philosophy. Under the influence of Christian Scholasticism, revelation was viewed as a matter of knowledge rather than legislation. Unlike Scholasticism, medieval Jewish and Islamic philosophy did not thrive,²⁰ and both of these latter religions succeeded in preserving the identification of the "word of God" with divine legislation and thus enjoyed greater freedom of thought.²¹

That all of the above expressions of Jewish–Christian religious differences are voiced by modern thinkers is no accident. The reduction of these differences to the question of legalism predominates in modern, rather than pre-modern, theological and intellectual discourse. Furthermore, the emergence of legalism as a central axis of Jewish–Christian religious differences and a conventional "Western metanarrative" is profoundly inspired by Martin Luther's theological construct of the Law–Gospel distinction.²²

18. "Revelation and law are thus identical. If law were not the necessary form for completing the correlation between God and man, revelation wouldn't it be either. Thus, the law of God is a necessary concept in monotheism." Ibid, 339.

19. Ibid, 336.

20. "This difference explains partly the eventual collapse of philosophic inquiry in the Islamic and in the Jewish world, a collapse which has no parallel in the Western Christian world." Strauss (2010: 18–19).

21. "The precarious state of philosophy in Judaism as well as in Islam was not in every respect a misfortune for philosophy. The official recognition of philosophy in the Christian world made philosophy subject to ecclesiastical supervision. The precarious position of philosophy in the Islamic–Jewish world guaranteed its private character and therewith its inner freedom from supervision. The status of philosophy in the Islamic–Jewish world resembled in this respect its status in classical Greece." Ibid, 21.

22. The association of Judaism and legalism does indeed have roots in patristic literature, but the formulation of the two as equivalent certainly is inspired by the Lutheran construction.

II. Under the Law: Paul, Luther, and Religious Differences

The delineation of Christian–Jewish differences through the anomist–legalist dichotomy is pivotal in the theological reasoning of Martin Luther, who himself anchored this dichotomy in Pauline theology. As is well known, Luther designated the tension between Law and Gospel as a binary contrast between two incompatible, comprehensive alternatives. The Law–Gospel (*Gesetz und Evangelium*) distinction according to Luther is a fundamental knowledge²³ that enunciates opposing religious realities:²⁴

Therefore, the Law and the Gospel are two altogether contrary doctrines ... For the Law is a taskmaster; it demands that we work and that we give. In short, it wants to have something from us. The Gospel, on the contrary, does not demand; it grants freely; it commands us to hold out our hands and to receive what is being offered. Now demanding and granting, receiving and offering, are exact opposites and cannot exist together.

For Luther, the Law–Gospel distinction contains within it an all-encompassing dualist division inclusive of a wide range of contrasting dichotomies: Old Testament and New Testament,²⁵ Moses and Christ, temporal and eternal kingdoms,²⁶ lawmaking and law-ceasing,²⁷ legislation and grace,²⁸ genuine Christianity and erroneous, deviant versions of monotheism.²⁹ To be sure, Luther emphasized that not only Judaism is trapped “under the

23. “We believe, teach, and confess that the distinction between the Law and the Gospel is to be maintained in the Church with great diligence ...” *Triglot Concordia, Epitome of the Formula of Concord*, Art. V, p. 801. “Hence, whoever knows well this art of distinguishing between Law and Gospel, him place at the head and call him a doctor of Holy Scripture.” Buree (1992: 156).

24. *Lectures on Galatians*, 26:208.

25. “Know, then, that the Old Testament is a book of laws, which teaches what men are to do and not to do ... just as the New Testament is gospel or book of grace, and teaches where one is to get the power to fulfil the law.” *Prefaces to the Old Testament*, 119.

26. “Moses had established the temporal government and appointed rulers and judges. Beyond that there is yet a spiritual kingdom in which Christ rules in the hearts of men; this kingdom we cannot see, because it consists only in faith and will continue until the Last Day. These are two kingdoms: the temporal, which governs with the sword and is visible; and the spiritual, which governs solely with grace and with the forgiveness of sins.” *Prefaces to the Old Testament*, 138.

27. Patristic and Scholastic interpretations that viewed the gospel as a “new law” and Christ as a legislator comparable to Moses were rejected by Luther: “For this reason then, when Christ comes the law ceases ... the office of Moses in them ceases ... The office of Moses can no longer rebuke the heart and make it to be sin for not having kept the commandments and for being guilty of death, as it did prior to grace, before Christ came.” *Prefaces to the Old Testament*, 127.

28. “The office of Moses ... no longer causes us pain and no longer terrifies us with death. For we now have the glory in the face of Christ. This is the office of grace ... by whose righteousness, life, and strength we fulfil the law and overcome death and hell.” *Prefaces to the Old Testament*, 127–8.

29. “There is no difference at all between a papist, a Jew, a Turk, or a sectarian. Their persons, locations, rituals, religions, works and forms of worship, are, of course, diverse; but they all have the same reason, the same heart, the same opinion and idea ... “If I do this or that, I have a God who is favorably disposed toward me; if I do not, I have a God who is wrathful.”

law”: other religions (e.g., Islam)³⁰ and denominations (e.g., Catholicism) also failed by embracing legalism as a comprehensive doctrine.³¹ Judaism, however, is portrayed as the archetypal legalist religion, and the Jewish insistence on legalism as a product of an intentional religious, or theo-political, agenda.³² Over and above previous associations of Judaism and legalism, Luther’s theology shifts legalism from the political realm to the religious, and thus transforms it into an indicator of religious identity. Notably, Luther’s theology designed and shaped the discourse of religious differences based upon this semi-agnostic typology: a typology that totalized and essentialized the religious differences as political theologies in contest. Legalism, or being “under the law,” is thus taken as the most colossal religious mistake of humanity from which Christianity emerged to redeem it.

Indeed, Luther’s antithetical construction of the Law–Gospel distinction is read into Paul’s reactions to legalism, for which reason awareness of the impact of Lutheranism in this regard has led to critical revisionist scholarship on Pauline juridical thought.³³ New readings of Paul suggest revised perspectives on the identity of Paul’s audience, the religious affiliation of its members, and their values, and offer better resolution on his addressees and his criticism.³⁴

Both revisionists and their opponents evidently would agree that the underlying assumption of Paul’s dicta is the equation of *nomos* and *torah*, i.e., the nominized meaning of the *torah*, and a reading of Paul’s reactions as constitutive of the discourse of religious

There is no middle ground between human working and the knowledge of Christ.” *Lectures on Galatians*, 26:396.

30. The Christian categorization of Islam, like Judaism, as legalistic religion is of course grounded in Luther’s theological construction. An interesting twist in this narrative is seen in Franz Rosenzweig’s (1886–1929) theological endeavors to portray Judaism as religion of love rather than a legalist religion. Rosenzweig confronts the Judeo-Christian symbiosis with Islamic nomocentrism and Kantian deontological ethics. Islam accordingly is a nostalgic religion that elevates the obedience to the law to highest levels, while both Judaism and Christianity are future-oriented religions that emphasize the virtue of love as an ultimate divine commandment. See: Rosenzweig (1985: 216–17).
31. “You hear, therefore, that all the children of men, all who are under the law, Gentiles and Jews alike, come under this judgment in the sight of God, that not even one of them is righteous, understands, or seeks after God, but all have turned aside and become worthless.” *The Bondage of the Will*, 184.
32. “For you see and hear how they [i.e., the Jews] read Moses, extol him, and bring up the way he ruled the people with commandments. They try to be clever, and think they know something more than is presented in the gospel; so they minimize faith, contrive something new, and boastfully claim that it comes from the Old Testament. They desire to govern people according to the letter of the Law of Moses, as if no one had ever read it before.” *Prefaces to the Old Testament*, 138.
33. The “Lutheran Paul” teaches that human beings fundamentally are sinners trapped in the sin–flesh–law complex and can be reformed only by faith in Christ, not by works done “under the law.” The “New Perspective on Paul” (*NNP*) argues that the tension between law and sin is universal and existential for humanity. Paul therefore is critical of it and indicates the possibility of living according to the Spirit, but is not an unremitting opponent of “work-ethic” and living “under the law.” See: Westerholm (2004).
34. See: Farnell (2005).

differences becomes possible against this backdrop. On the face of it, Paul's criticism is not of religious differences and contains no direct reference to the biblical *torah*; rather it is directed at several aspects of the Greek *nomos*. It refers to the theoretical notion of *nomos* rather than a concrete, material *nomos*,³⁵ and discloses intrinsic tensions within the nomoic form-of-life, rather than rejects the *nomos* in favor of a religious alternative.

The identification-qua-reduction of *torah* and *nomos* is indeed not Pauline. It is a product of the confluence of biblical ideas and values with Hellenist political conceptions through the second century BC. Yet it is clear that the equation of *nomos* and *torah* was far more than technical translation: it embraced Hellenic moral and political values,³⁶ tore out the biblical semantic of *torah*, and recharged it with emphases on the legal. Because *torah* is a key notion of the biblical theological worldview, this process of nominizing the *torah* reflects the Jewish–Hellenic amalgamation on a very deep, fundamental level. It was against this Judeo–Hellenic background that Paul problematized the *torah*–*nomos* reduction on ethical and theoretical grounds, and his critique created new theological, moral, and political horizons of legalism and obedience to law. In essence, this critique relates to the fact that the Law, or *nomos*, is essentially heteronomous, external and alien to mental attitudes, such as love and faith. The law is unable to penetrate the inner world and in fact is opposed to inner human life.

Nevertheless, the *torah*–*nomos* reduction is certainly not a trivial one. Indeed, many scholars argue that the use of *nomos* introduced a profound misunderstanding³⁷ of the very basis of Judaism that then was perpetuated by early Christian writers. Thus it is argued that this reduction narrowed the meaning and significance of *torah* – “instruction,” “teaching” – to include only its legalistic elements.³⁸

Still, it is clear enough that the Pauline critique of *nomos* stands for itself.³⁹ The application of Paul's critique to Judaism is viable only given the premise that the religion of the Jews is inherently associated with legalism and that the Jews ultimately adhere to the

35. Paul refers to various *nomoi*: “holy law” (νόμος ἅγιος; 7:12), “spiritual law” (νόμος πνευματικός; 7:14) “law of sin” (νόμος ἁμαρτίας), “God’s law” (νόμος Θεοῦ; 7:25). More importantly, he outlines the intrinsic tension between the external “flesh” (σάρκι) and the “inner man” (ἔσω ἄνθρωπον), corresponding to the distinction between the “law of mind” (νόμος τοῦ νοῦς) and the “law of the limbs” (νόμον ἐν τοῖς μέλεσίν; 7:23).

36. This embracement was one of the Greek view that orderly life achieved through binding laws (εὐνομία), on one hand, and lawlessness (ἀνομος), on the other, are mutually exclusive. According to this conception, civilization emerged from living under *nomos*, while *anomia* – living without law, against the law, or outside the law – was considered an extreme evil responsible for restless and insecure life and for catalyzing wars and tyranny.

37. Schoeps (1961: 213), for example, places the blame for what he perceives as “the Pauline misinterpretation of *torah*” on the shoulders of Hellenistic Jewish writers, especially Philo.

38. This criticism oversimplifies the *torah*–*nomos* reduction. The Greek idea *nomos* itself was multifaceted, and thus the nominization of *torah* was not simply a projection of a legalistic setting on the biblical lexis of *torah*. In fact, for most Greek thinkers the “written law” was secondary to “higher” laws, such as the “unwritten law” (ἀγραφος νόμος), the “living law” (νόμος ἐμψυχος), and the “law of nature” (νόμος φύσεως).

39. Some commentaries on Paul limit the critique to specific superfluous parts of the Mosaic Law, distinguishing between the irrefutable Divine Law and “Second Legislation” (δευτέρω

law in practice. Certainly, these assertions are not inarguable. Only later commentators viewed the Pauline critique as launching a theology of religious differences around the religious aspects of legalism and the link between religious identity and law.⁴⁰

It was Marcion's (85–165) gnostic approach that elevated the Pauline critique to a wholesale rejection of the nomic form-of-life, so that the Law and Gospel stand as mutually antithetical alternatives that manifest the stark dualism between the true God of the gospel (*deum evangelii*) and the God of the Law (*deum legis*).⁴¹ Nonetheless, most patristic and medieval accounts did not follow this antithetical perspective, and instead subscribed to an accommodative perspective narrating religious differences through historical progress, with a nomic period merely intervening between other phases in a restorative history.⁴² The accommodative method of narrating religious differences by historicizing them was widespread in the late ancient and medieval discourse on religious differences. Aside from ecclesial traditions that place Jewish–Christian differences on a historical continuum, it was a central theme of Quranic theology with regard to earlier forms of monotheism and revelations, as well as embraced by Jewish thinkers who used historical narrative to give meaning to typologies of religious differences.

Notwithstanding, recognition of legalism as a core component and explanatory feature of religious differences was not universal. For the predominant medieval Jewish thinkers, in fact, law and legalism were an entirely inessential component of religious identity and thus irrelevant as indicators of religious differences.⁴³

In sum, the modern conception of religious legalism is related to the identification of Judaism and legalism, which is a joint outcome of (1) the ancient reduction of *torah–nomos*, (2) Paul's ethical criticism of *nomos*; and (3) the legalist–antinomian distinction propounded by Lutheranism.

Nevertheless, the conception of religious legalism transcended the theological discourse of religious differences. The identification of Judaism and legalism simultaneously inspired competing camps within Jewish communities: traditionalist Jews elevated

σιν, *tinyan nimosa*, second *nomos*, *secundum legis*), the latter of which appeared as circumstantial need. See: Fonrobert (2001).

40. Paul's biography certainly is crucial as background to his critique of the law. Prior to his missionary life, Paul was a student of the rabbis in Jerusalem. He was well acquainted with Hellenic cultural values and political principles and obviously had a complicated relationship with the Roman legal system: he enjoyed the privileged status of a Roman citizen (Acts 22:28), yet was persecuted and executed by the same system of laws.

41. Tertullian reports that "Marcion's special and principal work is the separation of the law and the gospel (*separatio legis et evangelii*), by which he contended the diversity of the gods (*diversitatem deorum*)" (*Adversus Marcionem*, I: XIX).

42. For example, Ephrem the Assyrian (fourth century) suggested a tripartite periodization: the Hebrew epoch, in which people were "whole in knowledge," living naturally in accord with God's wishes, so that laws were not necessary; the Christian epoch, which restored the old religion through a divine gift that made laws again unnecessary; and between them, the legal epoch, in which people were incapable of living in accord with nature and laws thus were necessary. See: Shepardson (2008: 75–7); Yelle (2011).

43. See: Galston (1978).

the ideal of legalist religion to unprecedented heights of imaginative metaphysics,⁴⁴ while Reform Jews used it to characterize and criticize traditional Rabbinic Judaism.⁴⁵ Jewish scholarship posited nomocracy in contrast to theocracy, describing the evolutionary stage of early Judaism as a shift from theocracy to nomocracy due to theological changes in the perception of the God of Israel.⁴⁶

At the same time, with the emergence of religious studies as an academic discipline, the anomist–legalist dichotomy came to be articulated through academic apparatuses as a “scientific” taxonomy that divided ethical religions (as opposed to natural religions) into nomic or national religions and universal religions.⁴⁷ This dichotomous portrayal came in the aftermath of nineteenth-century intellectual and theological endeavors to portray Christianity and Judaism as competing traditions with regard to the theological value of the law.⁴⁸

Moreover, throughout the twentieth century, the notion of legalist religion was applied to describe the genius of Islam⁴⁹ in comparison to the political experience and religious heritage of Europe, and nomocentrism was invoked to describe Islam in both internal and external perspectives. It was used for explaining the intellectual hierarchy within traditional Islamic societies, under which jurists and legal learning were more respected than theologians and theosophic contemplations on the fundamentals of Islam.⁵⁰ Likewise, nomocentrism was

44. Moses Schreiber (*Chatam Sofer*, 1762–1839), an uncompromising opponent of the Reform movement in Modern Judaism, coined the idiom “nature is subordinated to the divine law (*torah*)” See: *Responsa of Hatam Sofer* (Bratislava, 1841), I:14, pp. 6a–6b.

45. Some authors (e.g., Joseph Salvador, Abraham Geiger, Claude Montefiore, and Martin Buber) thought of Jesus as an ideal Jew who correctly grasped the ideal of liberal Judaism (i.e., that Judaism is not legalism) and as such a source of inspiration for Jewish reformation. See: Brill (2012: 236–7).

46. “In due time the Jews recognized that God was not only their God but also the God of the universe. They believed, however, that they had been the only ones privileged to receive His Torah ... They therefore had to follow the laws of God ... the Jewish religion which was a theocracy and based on faith was now changed to a religion controlled by laws ... νόμοκράτεια, nomocracy.” Zeitlin (1944). Zeitlin moreover suggests viewing reactionary movements in the medieval and modern history of Judaism as struggling with the ideal of nomocracy.

47. The reduction of the legalist–anomist dichotomy into that of the national and the universal sharpened the importance of differences between the religions to the question of Jewish emancipation and integration in general European culture.

48. “Tiele begins by accepting the clearly apologetic distinction between ‘nature’ religions and ‘ethical’ religions, working out a complex taxonomy of nine types and subtypes of the former, but only two sub-divisions of the latter – ‘national/nomistic’ and ‘universalistic.’ As the addition of the term ‘nomistic’ makes clear, the contrast is essentially that between Judaism and Christianity.” Smith (1996: 395).

49. “Islam is, first and foremost, a nomocracy. The highest expression of its genius is to be found in its law; and its law is the source of legitimacy for other expressions of its genius. The traditionists themselves had to find expression in the schools of law ... The core of the Islamic genius is expressed in both law and traditionalism; and Islam, at its core, is a traditionalist nomocracy.” Makdisi (1979: 7–8).

50. “Because Islam was a nomocracy, the first level was comprised of legal scholars. The religious law and traditions were valued above all else, and, therefore, valued even more than theology.” Grant (2008).

ranked as a key notion in comparative jurisprudence, highlighting the extent to which Western theories fell short in trying to account for non-Western and pre-modern legal traditions and in doing so provide a counterexample to the statist premises of modern legal and political theories.⁵¹ Sherman Jackson for his part stresses the cultural dimensions of nomocentrism as of greater salience than the political dimension,⁵² a position according to which Islam demonstrates an alternative to legal philosophy that acknowledges the monopoly of the state,⁵³ and offers an unalloyed case of a society that endorsed “the rule of law squared.”⁵⁴

Historical and philological criticism indeed challenged the identification of Judaism and legalism by faulting each of the three components described above. Nevertheless, the notion of Judaism and Islam as law-based religions remains accepted and widespread.⁵⁵

The fact is that the three components are based on an ostensible progression from ancient to early modern religious history but ignore medieval efforts to grapple with the relationship between divinity and law and with legalistic religious values. A review of Jewish medieval thought suggests an overt omission of the nominized understanding of divine law, and thus provides another rebuttal of the association of Judaism and religious legalism.

III. Beyond the Law: Denominized Divine Law

Reflections by medieval Jewish thinkers, especially those who lived within Islamic milieus, on the nature of Judaism as a religion and its legalistic components and values explicitly counter the identification of Judaism and legalism. Their perceptions of the Jewish religion significantly differ with the ideal of being “under the law.” In their perspectives, legalism and law, human as well as divine, are neither basic elements of theology nor ultimate religious ends.

What is more, in contrast to the Hellenic propensity for identifying *torah* with *nomos*, medieval Jewish accounts of the divine laws and their religious meanings appear to stress the fundamental discrepancies between these two concepts. Their acquaintance with Greek philosophy indicates that they not only escaped this nomenclature and conceptual identification, but consciously rejected the *torah–nomos* reduction even with regard to ostensibly nomic elements of the traditional content of *torah*. This anti-nomic interpretative trend is manifested in a variety of ways and on various levels: by demoting the legal value of religious content, by dislodging the law from the socio-political realm, and by treating the law as a means for higher ends. A few aspects of this trend will be illustrated below.

51. Khadduri, for example, draws upon the nomocentric character of Islam in arguing for an inverted outlook on state–law relationships: “Hence the divine law (or a sacred code), regarded as the source of governing authority, was the essential feature in the process of control under these systems. The law, it will be recalled, precedes the state: it provides the basis of the state. It is therefore not god, but god’s law which really governs; and, as such, the state should be ... called divine nomocracy.” Khadduri (1955: 16).

52. Jackson (2006).

53. *Ibid.*, 163.

54. *Ibid.*, 165.

55. See the extensive discussions in: Richardson (1986); Richardson and Westerholm (1991).

Departing from the traditional concern with the collective redemption of the Jewish people, intellectual circles in Judeo–Arabic culture focused their soteriology on the ultimate felicity of the individual. In contrast to Paul’s addressees, the target audience of these Andalusian rabbis was those Jews who focused on observing the Law (Arabic: *shari’a*) while neglecting ethical and intellectual demands or goals.

The Saragossan jurist Bachya Ibn Paquda (first half of eleventh century) developed a system that displaced the law from the socio-political field to the ethical and spiritual domain. Though he lacked acquaintance with ecclesiastical literature,⁵⁶ Ibn Paquda was highly sensitive to a key element of the Pauline critique: the dissonance of the exteriority of the Law and the inner life of the self. However, while the Pauline critique extensively stressed the incompatibility of the Law, as heteronomous demand, and inner mental attitudes,⁵⁷ Ibn Paquda extended the applicability of the law to include mental dispositions as well. In other words, unlike Paul, Ibn Paquda abolishes the distinction between external conduct and internal mentality, between submission to heteronomous laws and autonomous *affectus*. He asserts that the law addresses the mental state-of-affairs as well and that the inner self is capable of compliance with demands and duties. Instead of the incongruity of heteronomous law and autonomous love, Ibn Paquda developed a theory of dual agency encompassing an external-corporal agency and an internal-mental one. In this theory, religious knowledge and obligations are divided into two categories: external knowledge, concerning obligatory matters of the limbs (*jawarih*), and internal knowledge, concerning obligatory matters of hearts (*qulub*). The latter is more important than the former, since it is the heart⁵⁸ that guides both inward and outward actions. Consequently, once internal duties are acknowledged and equated with external duties, the Pauline articulation of legal heteronomy as a problem vanishes, and harmony between religious mentality and behavior is not only plausible, but also designated a supreme religious goal:

You should know that the aim and the benefit of the duties of the hearts is the balancing of our outwardness and inwardness (מראוזה אלת אהר ואלבאטן) in obeying God, so testimonies of the heart, the tongue, and the limbs are equated ... if our outwardness contrasted with our inwardness, and our belief [contrasted with] our speech, and the movement of our organs [contrasted with] our conscience, then our obedience to our Creator would not be complete ... for our adulterated worship and false obedience would not be accepted.

In line with his contemporaries, Ibn Paquda viewed divine law as historically relative and universal.⁵⁹ Thus the “duties of the heart” – namely, ten fundamental religious obligations of the heart⁶⁰ – as well are described as means to universal ends.

56. Ibn Paquda was, however, well acquainted with Islamic sources, which he quotes (Mansoor, 1973).

57. On the articulation of Paul’s critique in terms of a tension between the exteriority of the body and the inner self, see note 33 above.

58. On Ibn Paquda’s connection to Sufism and in particular the role of the heart in Sufi tradition, see: Yazaki (2013: 145–73).

59. Kreisel (1988).

60. (1) Unification (*tawhid*) and sincere devotion to God; (2) contemplation (*i’tibar*) of created beings; (3) obedience (*ta’a*) to God; (4) total reliance upon God (*tawakkul*); (5) dedication of all acts to God alone; (6) humility (*tawadu’*); (7) repentance (*tawba*);

The remarkable poet, scientist, commentator, and philosopher Abraham Ibn Ezra (1089–1167), in the introductory section of his book *Yesod Mora*,⁶¹ bitterly criticizes the common phenomenon of seeking expertise in the laws of the *torah* out of aspiration to gain juristic prestige (which eventually leads to social friction) and of studying the laws in order to strive toward better and just society (because any law would be superfluous).⁶² Ibn Ezra seeks an ultimate justification for the commandments that is invariant across all social and historical situations, since the divine laws of the *torah* should have an ultimate purpose beyond incidental circumstances. In rejecting a nomic view of the laws of the *torah*, Ibn Ezra posits that the ultimate purpose of our existence as human beings lies not in our contribution to communal life, but in the epistemic gains of understanding God’s work and knowing Him.⁶³ Divine laws thus are only one aspect of divine revelation, not necessarily the most important.

Although Ibn Ezra acknowledges the political gist of medieval Neoplatonism, he evinces no interest in the “ideal city.” He subscribes to the philosophical view that the purpose and goal of human existence is to “know God” – not to establish a social or political order of one particular flavor or another – and thus is concerned with individual duties and responsibility:⁶⁴

The basis (שרש)⁶⁵ of all divine commandments is to love God with all one’s soul⁶⁶ and unite with Him, and this can be fully attained only by acknowledging the deity’s deeds in heaven and on Earth and by knowing His accustomed conduct ... and knowing God is possible only through knowing one’s mind, soul, and body.

Though the theology of Moses ibn Maimon (1138–1204) is regarded as a paradigmatic synthesis of political philosophy and *halakhah*, it would be wrong to identify Maimonidean thought as advocating religious legalism.⁶⁷ Moreover, various expressions found in his writing give the impression that he retracted his view of the divine laws of the *torah* as a case of *nomos*. In the introduction to his theological work *The Guide of the Perplexed*, he distinguishes between “legalistic” inquiries into the laws of the *torah* and philosophical readings of it by designating experts on the latter and excluding scholars of the former as potential addressees.⁶⁸ Further, in remarks on political science toward the

(8) self-examination (*mahasabat al-nafs*); (9) renunciation (*zuhd*) of this world; (10) sincere love (*mahabba*) of God.

61. An 1158 monograph on the rationale of the commandments, written for a London friend, Joseph ben Jacob. On Ibn Ezra’s works and background, see: <http://plato.stanford.edu/entries/ibn-ezra/>.

62. Ibn Ezra (2002: 80–7).

63. “The person (האדם) must set himself aright. He must know the commandments of God, who created everything. He must try with all of his strength to understand [God’s] works – then he will know his Creator ... and when he knows Him, he will find favor in His eyes.” Ibn Ezra (2002: 84).

64. *Commentary* on Ex. 31:18.

65. The literal meaning of the word in medieval Hebrew spans the senses of “root,” “principle,” “reason,” “purpose,” and “rationale.”

66. Referring to Deut. 6:5: “Love ... your God with all ... your soul.”

67. Against viewing Maimonides as ‘narrow legalist’ see: Twersky (1987).

68. “It is not the purpose of this Treatise to ... teach those who have not engaged in any study other than the science of the Law, i.e., jurisprudence (עלם אלשריעה אעני פקההא). For the purpose of this Treatise ... is the science of law in its true sense (עלם אלשריעה עלי אלהקיקה).”

end of the last chapter of his earliest work, *Treatise on Logic*,⁶⁹ he includes an intriguing note on the limitations of *nomoi* relative to divine standards of conduct:

The learned men of past religious communities used to formulate, each according to his degree of perfection, measures and canons⁷⁰ (תדאביר וקואנין) by which their princes governed subjects. They called them *nomoi*, and the peoples used to be governed by these *nomoi* ... In these times, all the preceding – i.e., the policies⁷¹ and *nomoi* (אלנואמיס) – have been dispensed with and men are conducted according to *al-awamir al-ilahiyyah* (אלאלהיה אר באלאואמר).⁷²

How are we to understand this statement? Is the distinction between *nomoi* and *al-awamir al-ilahiyyah* reflective of the distinction between human law and divine law, between *nomos* and *torah*, or is there here something more essential?

The term *amr* (and *amara*)⁷³ in the Quran and in classical Arabic carries a rich variety of senses essentially comprising two distinct groups of meanings. One, with the plural *awamir* (اوامر), embraces the notions of “order,” “command,” and “decree,” while the second, with the plural *umar* (امور), signifies “matter,” “affair,” “concern.” Medieval translations of Maimonidean texts render the second meaning as “divine matters” (עניינים אלהיים), “divine words” (דברים האלהיים), or *res divinae*,⁷⁴ while modern translations tend to emphasize the first meaning, e.g., “divine commands”⁷⁵ (האלהיים צווים) or “divine laws.”⁷⁶ Nevertheless, the core meaning of Maimonides’ statement remains unchanged regardless of which meaning is attributed.⁷⁷ Clearly, Maimonides distinguishes between two types

69. The complete Arabic text of *Makalah fi-sina'at al-mantik* was discovered in Turkey by the early 1960s. My translation is based on the Arabic version as published by Efros (1966: 41), with references to medieval (Efros (1938)) and modern (Kafih (2010)) Hebrew translations and philological commentary (Berman (1969)).

70. The Arabic term *qawanin* (قوانين; sing. *qanun*) usually is translated as “rules” but can be fairly rendered literally as “canons.”

71. The Arabic term *siyasat* (سياسات; sing. *siyasa*) signifies both “policies” and “administrations.” Medieval Hebrew translations suggest meanings more in keeping with the former, with Tibon and Vivas rendering דרות (Efros (1938: 63, 129)) and Ahituv הנהגות (ibid., 99), while modern English translations tend toward the latter (Efros (1938: 64): “laws”; Berman (1969: 110): “regimes”).

72. Lat. *res divinae*. Medieval Hebrew translations indicate “divine matters.”

73. Horovitz (1925) argued that the Quranic *amr* derived from the Aramaic notion of *memra*, which stood in Christian literature for *logos*.

74. *Logica Sapientis Rabbi Simeonis, per Sebastianum Munsterum latine iuxta Hebraismum uersa: quae Hebraeorum Comentariorum uolentibus, non tam utilis est quam necessary* (Basileae, 1527), f. 57.

75. Kafih (2010: 188).

76. Efros (1938: 64); Mahdi and Lerner (1963: 189–90). Berman (1969: 110, n. 10) rightly notes that the medieval versions seem to be mistaken, as the plural form *awamir* “can only have the meaning commands.” However, the fact that we have only one Arabic version and all medieval versions embrace the “non-legal” meaning allows us to speculate about the existence of another version, not found yet, in which the Maimonidean text uses the term *al-umar al-ilahiyyah*.

of guiding standards for human conduct extracted respectively from two notions – either *nomos* or *al-amr al-ilahi*⁷⁸ – noting that over the course of history, “divine standards” have replaced human *nomoi*.

The vernacular term for “divine standards” should be understood in a “secularized” way.⁷⁹ The adjective “divine” here basically means “spiritual” or “not corporal,” as it is used earlier in the same chapter, where Maimonides explains that “divine science” (*al-i’lm al-ilah*) is the science of non-corporal entities and includes theology and metaphysics.⁸⁰ “Divine standards” therefore should be understood as principles that are not self-imposed norms of human creation, but rather principles derived from theological and metaphysical knowledge.⁸¹

Interestingly, Maimonides narrates the distinction between *nomos* and *al-amr al-ilahi* through a historical progression. Thus the two not only differ conceptually, but also illustrate discrete historical phases or even progress.⁸² This idea certainly does not evidence an acquaintance with ecclesial literature, but it does reflect an anti-Hellenic historiosophical view according to which civilizational progress occurs along an axis stretching from an epoch in which peoples were governed by *nomoi* to societies ruled by divine standards.

Butterworth⁸³ makes a very important point with his observation that medieval Judaism and Islam provide only limited reflections on the law. Even the most sophisticated political philosophers did not question the divine law, but rather attempted to understand its purposes and goals or the intentions that the lawgiver might have had. Moreover, being fully aware of Hellenic political philosophy, these reflections consistently deny the nomic aspects of the divine law and the *torah-nomos* reduction. Instead,

77. Berman (1969: 110) remarks on the originality of this remark and explains it as a neutral account merely describing contemporary circumstances in which religious communities claimed to be governed by “divine standards” rather than human-made laws without prejudging the merits of the *nomoi* and the divine alternative.

78. Maimonides elsewhere differentiates between divine law (*shari’a*) and *nomos* with respect to the source that created them: the former is a product of the prophets, and the later of statesmen. “Only this law do we call divine law (אלאֵהִיה שְׂרִיעָה); the other political measures, e.g., the Greek *nomoi* ... are the works of statesmen, but not of prophets” (*Guide* II, 39).

79. See: Hughes (2004).

80. “The divine science (אֵלֵלֵם אֱלֹהִי) is divided into two parts. One of them is the study of ... whatever appertains to God ... and the transcendent intelligences. The other part of the divine science is the remote causes ... and divine science is called metaphysics as well.”

81. The devaluation of the *nomoi* certainly is in agreement with Maimonides’ philosophical temperament. In this regard he seems to share the view of Ibn Bajjah and Ibn Tufayl that religious laws are mere indicators of philosophical and theological truths. The same is the case within the philosophical inquiries of Al-Farabi, Ibn Sina, and Ibn Rushd. In this respect, medieval philosophers revitalized the ancient translational option of rendering *torah* as *logos* rather than *nomos*. In fact, scholars also pointed out the semantic relationship between *amr* and *logos*. See: Crollius (1974: 71–9).

82. Berman (1969: 110, n. 10) reflects on the parallel narrative introduced by Ibn Khaldun according to which “God dispensed with the rational regime of the Persians and replaced it with Islam at the time of the Caliphate because the ordinances of the *sharia* made it superfluous.”

83. Butterworth (2007: 219, 249).

they embrace the pharmacological image of the law,⁸⁴ according to which its main end is to heal the soul of the individual and ensure its health.

IV. Conclusion

Rather than viewing the equation of Judaism and legalism as a consistently accepted, even inherent, theological notion, the foregoing discussion suggests that we ought to regard it as part of the economy of religious differences by which religious identities are expressed and defined as mutual alternatives. This argument has been demonstrated through an emphasis on the distinct discrepancies between three cultural settings: late ancient Judeo-Hellenic, medieval Judeo-Arabic, and post-Reformation European.

Against the Biblical-Hellenic confluence, the *torah-nomos* reduction became a keystone notion that impacted on the simultaneous formation of Christianity and Rabbinic Judaism and shaped some of their central motifs as religious alternatives. Each of these first-century religious milieus responded differently to the possibility of understanding the “word of God” in terms of *nomos*. Unreserved celebration of the identification of *torah* and *nomos* (Philo), criticism (Paul), and intense rejection (Marcion) are instances of reflective responses. The reorientation of post-Temple Judaism around the scholasticism of *halakhah* and the professionalization of legal knowledge (i.e., rabbinism) were major results of the *torah-nomos* reduction, though less articulated in theoretical and reflective terms.

In the wake of these developments, the predominance of legalism as a central theme in the developing discourse of religious differences appears to be an indispensable part of inter-religious polemics and dialogue. Nonetheless, a discourse of religious differences is also a constitutive process that creates and constitutes the perception of selfness and otherness. Exposition of Jewish-Christian religious differences through the question of religious legalism is an example of a cyclical mechanism of representation, perception, and identification through which Jewish otherness was designed by Jews and non-Jews alike.

While the medieval Jewish thinkers contested or ignored the *torah-nomos* reduction, the nomocentricity of Judaism and the religious values of the divine laws also were challenged, and a discourse of religious differences was formed on the basis of different themes and principles.⁸⁵ Lutheran theology in its day revived and intensified the discourse of religious differences on the basis of religious legalism. By radicalizing Paul’s critique of *nomos*, Luther essentialized the association of Judaism and legalism, an insight that was internalized as Jewish self-perception and a major theme of the Western myth about Jewish-Christian religious differences.

84. The medieval pharmacological imagery is inspired by the Platonic heritage as articulated in *Statesman* 293 b-c.

85. To borrow the title phrase of Hayes’ brilliant 2015 study, we may say that while in ancient times the question of “divine law” was “what’s divine about divine law?” medieval thinkers were troubled by a very different question: “what is legal in the divine law?”

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