

I propose an independent project in Canada to research whether Orthodox Muslims and Jews living in secular-liberal democratic societies can obey their religious legal codes and conform to the laws and policies of their host countries; and what policy implications that may arise from the adherence to such religious legal codes.

Islamic law, known as *Shari'ah*, and Jewish Law, known as *Halakha*—both words meaning ‘the way’—share extensive parallels in law and theology. A plethora of scholars have demonstrated that Jewish converts to Islam influenced the development of *Shari'ah* during the initial years of its development. It is likewise well established that centuries later, in Islamic Spain and elsewhere, both communities developed their legal codes and philosophies side-by-side. The content of these codes and philosophies continues to guide the personal lives of Orthodox (or observant) Muslims and Jews into present times.

Due to these shared religious traditions, both faiths have parallels in legal reasoning and rulings. Jewish law has developed almost exclusively in political and collective exile. Due to the absence of temporal authority to enforce Jewish law, deciders of *Halakha* shaped their laws under the presumption of operating in a ‘foreign’ legal system in the countries that hosted them. Islamic law on the other hand, entirely developed in Muslim majority states. Certain Islamic legal traditions, however, did develop mechanisms to facilitate Muslims living in non-Muslim societies to adhere to the requirements of *Shari'ah* and adhere to the laws of the non-Islamic societies.

Presently, large Muslim and Jewish minority communities exist in many non-Muslim secular-liberal democratic societies throughout the world. The migration of millions of Muslims from Muslim majority societies to the secular-liberal democratic societies of Europe, North America, and Australia over the past fifty years has raised questions among Muslims on how to acculturate yet continue to adhere to their faith. For Jews, this process culminated with the Jewish enlightenment (*haskalah*) and is ongoing. In North America, Jews have created numerous religious institutions to facilitate Orthodox Jews adhering to *Halakha*—mostly in the adjudication of commercial and family law matters. Jewish courts (*Beth Din*), operate throughout the world in parallel and increasingly in place of secular courts. Muslims in Europe, Australia and North America, on the other hand, have created *Shari'ah* courts (*Makhamut Dinyat Islamia*), informal and formal, and are increasingly experimenting with Islamically based mechanisms to implement Islamic law in the contexts of commercial law and Islamic finance—while also adhering to the laws of the non-Islamic societies which host them.

Canada is a secular-liberal democratic society often compared to the United States. The legal codes of the United States and Canada both evolved out of the fusion of English common law and Western Christian tradition. The largest minority religion in Canada is Islam (1,053,000), followed by Judaism (330,000). Both have large Orthodox communities. Both communities have judicial institutions, formal and informal, attempting to implement ‘divine law’ to adjudicate commercial disputes. For these reasons Canada provides a fertile opportunity in which to: (1) explore how Jewish and Islamic religious courts operate within the Canadian common law legal system; (2) determine how, if, and when the two legal systems differentiate between secular Canadian law, common and civil law, using a case study of a real estate transaction and a comparative analysis; (3) draw lessons which might be useful to other liberal democratic societies.

There are three views that I have encountered in my study of the relationship between Jewish and Islamic law to secular-liberal democratic societies that I would like to explore in the context of specific commercial law disputes, and in the context of Canadian law and society generally.

The first is a variation of the discussions found in the works of Tertullian, Matthew Arnold and Leo Strauss among others. The object of the Greek way of thought, with its origins in the Greek Polis and its emphasis on natural law, Matthew Arnold wrote in his seminal essay Hellenism and Hebraism, is to know rightly. The object of Hebrew law, with its emphasis on divine law and its Israelite origins, is to act correctly. Extrapolating these principals to our topic would indicate that the conflict between liberal democratic law and its earthly focus, and that of *Shari'ah* or *Halakha* and its heavenly focus, is perpetual. Thus, secular-liberal democratic societies and their laws and policies must account for perpetual and intractable ideological conflict. The second is that although a perpetual tension between heavenly and secular authority exists between Athens and Jerusalem, between Athens and Mecca, both faiths have already developed in classical times theological approaches to accommodate secular law. Therefore, the solution for a equilibrium between Athens and Jerusalem, argues this perspective, is already present within both faiths and only needs to be refined and rearticulated for the modern world. The third is that in order for Orthodox Jewish or Islamic law to be at home in the secular-liberal democratic societies, they must theologically 'reform' themselves, akin to the way Christianity did as an outgrowth of the enlightenment.

I have personally witnessed the tension between religious thought, law, and secular-liberal democratic society and how powerful the connection is between law, policy, and society of any type. I was raised in a culturally conservative Ultra-Orthodox Jewish community in New York where I studied Jewish law and Talmud in Yeshiva for nearly fourteen years—followed by two years more of advanced Yeshiva study at academies in Israel. As an undergraduate student at the University of Michigan, I immersed myself in the study of Islamic law and culture and studied with scholars such as Juan Cole, Sherman Jackson and Erik S. Ohlander, who introduced me to Islamic and Middle-Eastern history. At Cornell Law School, studying with Chantal Thomas, I used my training in Islamic law to study how Arab-Muslim societies in the contemporary Middle-East fashioned legal codes while drawing upon Islamic and Western secular sources. At the American University of Cairo, Bernard Freamon taught me the intricacies of Islamic jurisprudence and its application in the modern world. After law school, I saw parallel tensions within the common law tradition when I clerked for a federal Judge. I have also engaged in Jewish-Muslim interfaith work the past thirteen years during which I have had the time to explore the relationship between Jewish and Islamic law. These experiences uniquely position me to undertake this study.

My project will take eight months. The greatest resource available to me to answer these questions is fieldwork with Canadian Jews and Muslims. I will be a scholar at the University of Toronto School of Law working under the supervision of Professor Mohammad Fadel. I also intend to work with Imam Ibrahim Hussein of the Madina Seminary and with Rabbi Asher Vale of the Beit Din of Toronto to create and implement a plan for surveying a sample of the diverse Muslim and Jewish communities of Toronto by visiting places of worship and religious courts in operation while synthesizing that data with academic research. Combining field research with academic study, I intend to publish a presentation that will contribute to the ongoing discourse about the role of Orthodox Jewish and Islamic law in secular-liberal democratic societies in the context of commercial transactions.