

On the limits of intertextuality in Jewish and Islamic legal traditions

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Conventional approaches to studying the relationship between Jewish and Islamic legal traditions often places them in a linear relationship and seeks to identify the textual ‘borrowing’ and ‘influences’ from the older tradition to the younger one. However, texts were only one component of knowledge production and dissemination since oral composition and transmission were normative in the late antique period (and beyond). In addition, the survival of texts is idiosyncratic, such that claims of unique cultural ownership are unviable; multiple, regional traditions shared what frequently is misidentified as ‘originating’ in one particular tradition. The potential risk of searching for text-based intertextuality is that it becomes the methodological equivalent to holding a hammer and only seeing nails. Texts are reflective of contexts, but contexts are more pluralistic and shifting than texts. I will use a case study on the concept of ‘previous divine laws’ in the pre-modern Islamic tradition in order to demonstrate these methodological points. Instead of intertextuality, I propose the craft of legal recycling as a more productive model for examining the relations between legal traditions.

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