

The Talmudic Law

Introduction

The Talmudic law sets the foundation for the Jewish legal tradition. The Talmudic law is one of the earliest Jewish legal systems after the chthonic law.¹ As such, Talmudic law has enabled Jewish people to sustain their identity in the last thousands of years. The enormous vitality and prominence of the Talmudic legal system has attracted immense interest from the western legal systems. However, this legal system has come a long way though it is never complete because there is still a room for continuance to incorporate new commentaries and codes. Essentially, the Talmudic law enforces the Talmudic tradition that is divine and currently written in a manner that is independent from case law and decisional law.¹ Talmudic tradition seems like an enormous inverted pyramid in which the written Torah is located at the base, seconded by oral Torah, the Mishnah, the Talmud, and finally *responsa* and codes at the top. Talmud has never been finished because the top of the inverted pyramid continues to grow every day allowing additional codes and commentaries. This paper discusses why the Talmudic legal tradition is a religious legal system, how the Talmudic legal tradition has allowed the Jewish people to sustain their identity, and how Talmudic legal tradition influenced the U.S. legal system.

Why the Talmudic Legal Tradition is a Religious Legal System

The discourse about the religiosity of Talmudic legal tradition has been a contentious issue among sages, experts, academicians, and lawmakers.⁴ Some people contend that the Talmudic legal tradition is a religious legal system while others argue that it is not. While each side may have profound reasons for their claims, it is worth to determine the religiosity of this legal tradition by taking into account three critical factors that determine what constitute a

religious legal system. Specifically, these three key factors include the origin or source of the legal system, the core areas addressed by the legal system's rules, and finally the mode of operation of the legal system.²

Firstly, the determination of whether the Talmudic legal tradition is a religious legal system or not should be based on its origin and source. Does the Talmudic legal tradition bear religious roots? A positive answer to this question suggests that this legal tradition is a religious legal system while a negative answer suggests that it may lack elements of religiosity. Talmud is implicitly contained in the Torah, which is undeniably a divine law.¹ Although Talmud has not been directly derived from Moses like Torah, Talmud is inseparable from Torah because both have the same origin that is divine. Like any other religious legal system, Talmudic legal tradition is rooted in a religious framework. In particular, Talmudic law originated from God's word through a divine revelation to Moses, which is delineated in the books of the Hebrew Bible namely Exodus, Genesis, Deuteronomy, Numbers, and Leviticus.² In Christianity, these books are found in the Old Testament and constitute the Torah. Sages generated explanations and commentaries from the written Torah accelerating the development of the Talmudic legal tradition. Hence, the Talmudic legal tradition is a religious legal system because it originated from a divine framework, particularly the written Torah.

Additionally, the areas addressed by a legal system can determine whether it is religious or not. Typical legal systems strive to regulate interpersonal relations and the behaviors between society and individual.² However, most legal systems fail to include paternalistic laws such as preventing people from self-harm or suicide. Regulating interpersonal relations ensures that individuals' goals are not achieved through a process that harms others while regulating the behaviors between society and individual attempts to reinforce patriotism and loyalty to a nation.

Essentially, the Talmudic legal system extends the first two areas to incorporate paternalistic laws that are mostly outside the purview of typical legal systems. The spillover of this legal system into the third area, paternalistic laws makes Talmudic legal system to take a religious dimension.² Talmudic legal tradition does not only regulate visible human behaviors but also internal mental and emotional aspects, which gives it a religious quality. For instance, Talmudic legal tradition prohibits coveting, which is an internal mental state, just like the last commandant states “thou shalt not covet” (Exodus 20:14). The regulation of internal mental state goes beyond power of human legislators because it is extremely difficult to understand individuals’ internal mental states unless they disclose how they think or feel. Therefore, abiding to some laws within the Talmudic legal system must have been tied to a religious belief that a divine being, specifically God, judges ill thoughts and emotions.

Thirdly, mode of operation of this legal system can suggest whether it is a religious system or not. In other words, assessing tools used by this legal system to advance its agenda including interpretation, adjudication, and legislation can determine its religiosity. The courts within the Talmudic legal system comprise of religious characters including ordained judges and rabbis.¹ The inclusion of these religious characters implies that this legal tradition is religious. Rabbi refer to an ordained religious leader who officially expounds and apply Jewish laws.

How Talmudic Legal Tradition Enabled Jews to Maintain their Identity

Just like other identities, Jewish identity is predominantly defined by the recall of ancient information and utilization of common Talmudic law. Essentially, Talmudic law allowed Jews to maintain their identity because it admitted the transmission and conveyance of their identity through their maternal lineage.¹ Generations adopted the Jewish identity from their Jewish predecessors. Talmudic legal tradition admitted the transmission of Jewish identity from one

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generations to another through conversion even though the tremendous orthodox movements resisted conversions influenced by the reform movements. As a result, people who admitted to make the Talmud their law became Jewish and eventually assumed Jewish identity. However, people would opt to quit Jewish community by failing to adhere to the Talmudic laws. Nevertheless, serious neglect of the Talmudic laws was followed by physical sanctions described by notions of heresy and treason.³Worth mentioning, simple neglect of these laws did not invoke these physical sanctions. Furthermore, there was a notion of excommunication if Jewish people left Jewish community and neglected the Talmudic laws, though this notion did not prevent departure of those who wanted to abandon Jewish traditions.¹

Jewish identity based on the reliance on the Talmudic laws was also partly grounded on the reactions of other communities towards Talmudic legal traditions. The immense opposition from outsiders who banned Talmudic teachings and even burned the Talmud seemed to reinvigorate Jewish identity rather than weakening it.³ As a result, Jewish people established compulsory communities in response to premeditated efforts by other communities and states to destroy Talmudic legal traditions. Jewish people were massively expelled from the 13th century through the 18th century, from Spain, England, Lithuania, France, Portugal and some specific regions in Slovakia, Germany, the Czech Republic, and Italy.¹ The organized eviction of Jewish people from these nations and regions did not eradicate or eliminate them, but reinvigorated a sense of identity among the Jewish people.

How the Talmudic Legal Tradition Has Influenced the Legal System of the U.S.

Although the legal system in the U.S. seems secular, the Talmudic legal tradition influenced the legal system of the U.S. by providing a great deal of content for both its reforms and developments.¹The influence is not only evident in commercial law but also in criminal and

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civil laws. Additionally, the influence was evident in the public law, which reinforced the establishment of states. Despite that tremendous influence, critics wonder how such a religious and ancient tradition can provide a legal model for contemporary and secular state like the United States. Critics raise arguments about individual's rights and also the entire concept of Talmudic law.⁴ One way that Talmudic legal tradition has influenced the legal system of U.S. is providing profound recognition of rights. Although Talmudic law failed to enunciate the concept of individual entitlement to rights, it pronounced the concept of individual obligation.¹ Such as obligation to do justice. However, the legal system of the U.S. pronounces individual entitlement to rights like right to education, life, justice and so on. Although both provisions of rights are somehow differently pronounced, they are correlated because obligation to rights brings about the entitlement to those specific rights.

Additionally, critics judge Talmudic legal tradition on the grounds of equality and equity. Indeed, critics in the U.S. contend that this legal tradition does not explicitly guarantee equality of participation and opportunity.⁴ However, the legal system of the U.S. derives the concept of fair trial from this legal tradition. Equality is evident in the statement "The alien living with you must be treated as one of your native-born. Love him as yourself, for you were aliens in Egypt" (Lev. 19:33-4). The above statement implies that no one should discriminate against another because he or she is an alien. Indeed, it can also apply to trials because it requires all people including aliens to receive equal treatment. The legal system of the U.S. borrows the concept of equal treatment and embeds it into the sixth Amendment, which ensures fair trial to anyone without discrimination.

Bibliography

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