

All involved in comparative studies face a basic methodological dilemma: the tension between internal and external points of view. If we adopt an external point of view in comparing phenomena from each system, we may fail the test of authenticity; our claims may turn out to be meaningful in terms of the external criteria we choose to apply, but may lack meaning for those internal to the system being described. On the other hand, if we choose to describe each system exclusively in terms internal to it, it may turn out that there is no tertium comparationis. In legal studies, an increasingly popular mediation between exclusively internal (“positivist”) approaches (viewing the legal system only within the terms of its own authority system) and exclusively external (“realist”) approaches (viewing the law in factual rather than normative terms, the product of processes of cause and effect—whether psychological, sociological, political or economic) has been the adoption of what is termed a “moderate external point of view,” one which seeks to take full account of the concepts and argumentation used within the system, but viewed critically, integrating a variety of external approaches.

This, broadly, may be viewed as the approach of Neusner and his colleagues. They are certainly concerned to give the utmost respect to the internal point of view. They seek to speak as much as possible from the texts of the respective traditions; indeed, Neusner is...
well-known for his insistence on the identification of the philosophical voice not simply of different traditions, but of individual texts within those traditions. In these volumes the Jewish and Islamic scholars take turns in speaking first on a particular topic or responding to the agenda of the other. The topics they address are partly derived from an external conception of the common processes of legal systems: “the authoritative legal documents of Judaism and Islam,” “the intellectual sources of the law,” “the working of the law: institutions,” and “the working of the law: personnel.” In these chapters of Comparing Religions Through Law (henceforth CRL), the picture that emerges is largely one of similarities—as it is also in the substantive institutions treated in the companion volume, Judaism and Islam in Practice (henceforth JIP), which covers prayer, fasting, ablutions (under the rubric: “relations between believers and God”), betrothal, marriage, inheritance, divorce, almsgiving and charity (“relations amongst the faithful”), and definitions of the community and treatment of the outsider within it (“relations with outsiders”).

Comparing Religions Through Law proceeds from similarities to differences, of two types: “disproportions” and “unique categories.” Under “disproportions,” the authors ask about centers of emphasis, topics in the agenda of religious legal systems that are particularly stressed: they identify as such temple law and sacrifice in Judaism, slave laws in Islam (in that Islam “richly elaborates the law of slavery,” while Jewish sources are said to deal with slavery “only in passing:” “no tractate or composite of laws finds in the topic of slavery a generative problematic sufficient to sustain large-scale and fully articulated exposition” (CRL, p. 160; we are not told why the talmudic minor tractate Avadim, viewed by its modern editor as one of the “first post-Mishnaic compendia regulating specific Jewish practices and usages” is excluded from consideration).

Under the heading of “unique categories” (where “no shared rationality allows the one side to make sense, in its terms, of the points of difference with the other”—and thus the source of the mutual incomprehension in contemporary politics between Israel and the Muslim world: CRL, p. 193), they stress the significance of the land in Judaism—but not simply as a holy place, comparable to the status accorded by Islam to Mecca, Medina, and Jerusalem, or even as the site of Jewish political redemption (Neusner repeatedly distances his argument relating to the “Land of Israel” from modern issues regarding the “State of Israel”), but rather in the claim, termed “enlandisement,” of an inevitable restoration to the Land of Israel,