

Contents

Part I Legal Reasoning

1 Halakhic Comparative Jurisprudence	3
1.1 The Comparability of Jewish-Islamic Jurisprudence.....	4
1.1.1 What Justifies the Comparison of Jewish and Islamic Legal Systems?	7
2 Error and Tolerance	11
3 Unsettled Disputes	25
3.1 Two Concepts of Diversity.....	25
3.2 Karaites	30
3.3 Post-Talmudic Rabbis	38
3.3.1 Conclusion.....	43
4 Judicial Discretion (<i>Shiqqul haDa'at</i>)	45
4.1 Shiqqul haDa'at as the Dialectic of the Kalam	49
4.2 Shiqqul haDa'at and the Neo-Platonic Dialectic	55
5 Law and Violence	59
5.1 Violence as <i>Judicium Dei</i>	62
5.1.1 <i>Kol deAlim Gavur</i> : An Ambivalent Norm.....	65
5.1.2 The Legal Norm.....	66
5.1.3 Neutralizing Violence: Competence and Pre-Legal Procedure	69
5.1.4 Anarchy, Moral Transgression and Cause of Heresy.....	73
5.2 Violence and <i>Lex Naturalis</i>	74
5.3 Stabilizing Law by Violence	77
5.3.1 What does the Law Earn from Violence?	79
5.3.2 Conclusion.....	80

6	Legal Reasoning: Structure and Theology	83
6.1	The Qiyas (Legal Analogy)	85
6.2	Epistemology and Legal Theology	86
6.2.1	Orientating the Sacred Place	86
6.3	Did the Rabbis Oppose Legal Reasoning?	89
6.3.1	Holistic Jurisprudence and the Intelligibility of the Divine Law	90
6.4	Against the Dual-Stratum Paradigm	92
 Part II Knowing and Remembering		
7	Divine Memory	97
7.1	The Biblical Outlook	98
7.1.1	Memory as a Platform for the God—Israel Relationship	100
7.2	Hellenic Background	100
7.2.1	Ancient Greek Memory	101
7.2.2	The Platonic Turn	102
7.2.3	Aristotle	103
7.2.4	The Hellenic Heritage—Summary	104
7.3	Scripta in Cordibus Hominum	106
7.3.1	Memory as Inner Writing	106
7.4	Rabbinic Memory: A New Framework	109
7.4.1	Between Divine History and Divine Knowledge	109
7.4.2	Divine Gesture—Power and Grace	110
7.4.3	Heavenly Ascent—The Torah as a Gift	111
7.4.4	Intense Study: Memory as Grace	113
7.4.5	Memory in Early Mystical Literature	115
7.4.6	Power and Domination	116
7.4.7	At the Gates of the Heart	118
7.4.8	Replacement of the Heart	120
7.4.9	Power Versus Loving-Kindness	121
8	Covenantal Memory	123
8.1	Heteronomy, Promise and Commitment	125
8.2	Covenantal Community in the Second Temple and the Mishnah	126
8.2.1	Sinai and the New Covenant	128
8.2.2	St Paul: Socio-Theological Critique and Religious Revolution	130
8.3	Historicizing Memory	132
8.3.1	Utopia and Bounded Knowledge	133
8.3.2	Utopia and Evil Inclination	135
8.3.3	Restoration and Evil Inclination	135
8.3.4	Forgetfulness and the Rabbinic Reading of Jeremiah	138

9 Mission and Memory	139
9.1 The Founding Narratives of the Babylonian <i>yeshivot</i>	140
9.1.1 Analysis of the Homilies	140
9.1.2 Praise of the Oral Torah and its Ascetic Nature.....	140
9.1.3 Sinai Covenant and the Oral Torah.....	141
9.1.4 The Source of the Covenant	144
9.1.5 The Actualization of the Covenant of Memory	145
9.1.6 The Historical Narrative	146
9.1.7 The Yeshiva in Messianic Days.....	149
10 Theorizing Knowledge	151
10.1 R. Sa'adyah Gaon—The Hazard of Obliviousness.....	152
10.1.1 Mishnah-Talmud as Roots-Branches.....	154
10.2 R. Sherira Gaon—The Intellectual Metamorphosis.....	157
10.2.1 The Typology of the Early Knowledge	158
10.2.2 Talmudic Scholasticism	167
10.2.3 Summary.....	168
References	171
Primary Sources	171
Secondary Literature	173
Index	181