Epilogue

The Decline and Resurgence of Legal Nationalism in Postcolonial India and Israel

Legal scholars in colonial India and Mandatory Palestine produced novel theoretical works that were both sophisticated and critical. They also offered unique insights into the nature of law, generally, and the nature of ancient religious systems, their norms, and their institutions, in particular. Studying the history of this forgotten episode in the development of modern legal theory is important in its own right, but also because it contains valuable lessons for contemporary political debates in India, Israel, and many other countries. To demonstrate the contemporary relevance of the story told here, I will briefly discuss the study of legal theory in post-independence India and Israel and note the surprising resurgence of political interest in Hindu and Jewish traditions and values in recent years.

India became independent in 1947. The State of Israel was born a year later. In the decade following independence in both India and Israel, the prestige of lawyers and legal scholars seems to have declined. While the respective leaders of the two new states, Jawaharlal Nehru and David Ben-Gurion, had both trained as lawyers, they held lawyers and the law in low esteem.[1]

[1] A similar trend occurred in Egypt, where Nasser's regime sought to curtail the role of lawyers in the public sphere and to replace them with doctors, engineers, and, of course, soldiers. See Amr Shalakany, "Between Identity and Redistribution: Sanhuri, Genealogy and the Will to Islamise," *Islamic Law and Society* 8 (2001): 201, 242. One might object to the argument that Nehru and Ben-Gurion held law in low esteem by pointing out that both leaders played key roles in shaping the constitutional frameworks of their respective new states. However, Nehru approached the Indian Constitution as more than a purely legal

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

In a speech to law students in the period immediately preceding Indian independence, Nehru did not hide his contempt for law and legal traditions. "Lawyers have had their day," he informed his audience. While they had led "public movements and public life" in the nineteenth century, they had since "faded further and further." Lawyers once used to play a "very pre-eminent" part in the Indian nationalist movement, Nehru admitted, but "to-morrow is not for the lawyers. To-morrow is for the scientists, the industrialists, and the Engineers."[2] Nor was Nehru interested in the cultural–nationalist project of studying ancient Indian culture. "India is a very ancient land," he said, but the "proud inheritance" of its traditions also constituted a disadvantage because the "long inheritance has brought dust and cobwebs of the past with it."[3] Nehru's speeches contained many other examples of a disparaging attitude toward law, lawyers, and ancient Indian legal traditions.[4]

document to be used only by lawyers. For example, in his 1946 speech in the Constituent Assembly introducing the Objective Resolution, he remarked: "Laws are made of words but this Resolution is something higher than the law. If you examine its words like lawyers you will produce only a lifeless thing." See Jawaharlal Nehru, "The Objective Resolution," *Constituent Assembly Debates* (New Delhi: Government of India, 2014), Vol. 1, 58. Ben-Gurion's approach to constitutionalism was shaped in part by a deep skepticism toward judicial review. It has been argued that his concern that a constitution might empower judges to strike down primary legislation was among the reasons he ultimately abandoned efforts to establish a formal Israeli constitution. See Shani Schnitzer, "Ben-Gurion, Bagatz veha-Hukah she-Lo Haytah," *Mishpatim* 53 (2025): 489. More broadly, the idea that constitutions are primarily legal documents is a relatively recent, American-influenced development. Historically, constitutions were often conceived as political or pedagogical texts, meant to express national ideals and guide civic life. See Assaf Likhovski, "The Rise and Demise of Constitutional Duties in Israel," *American Journal of Legal History* 61 (2021): 90, 91–2; Mila Versteeg, Adam Chilton, and Erensu Altan, "Constitutional Duties," *American Journal of Comparative Law* 72 (2024): 685.

[2] Pandit Jawaharlal Nehru, "Building up of India of To-morrow," *Calcutta University Law College Magazine* 15 (1945–46): 4, 4–5. See also Alexander Williams, "Imagining the Post-Colonial Lawyer: Legal Elites and the Indian Nation-State, 1947–1967," *Asian Journal of Comparative Law* 15 (2020): 1, 8–13. Nehru's mentor, Gandhi, who was also a lawyer, shared these sentiments. See, e.g., M. K. Gandhi, *The Law and the Lawyers*, ed. S. B. Kher (Ahmedabad: Navajivan, 1981), 212, 234, 253. See also Marc Galanter, "The Aborted Restoration of 'Indigenous' Law in India," in *Law and Society in Modern India* (Delhi: Oxford University Press, 1997), 37, 39n12 (discussing Gandhi's views on the legal profession).

[3] Nehru, "Building up of India of To-morrow," 6.

[4] See Jagat S. Bright, ed., *Important Speeches of Jawaharlal Nehru*, 2nd ed. (Lahore: IPW, 1946), 49 ("lawyers and their petty quibbles"); 124 ("*Swaraj* [self-rule] will not be obtained by scoring lawyer's points or by forensic eloquence"); 126 ("talk, specially that of lawyers, is a harmless commodity"); 283 ("[t]he fate of nations is not decided by lawyers' arguments"); 135 ("many of us, regardless of what is happening all around us

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

Given this attitude, it is no wonder that the English law professor J. Duncan M. Derrett noted, following a visit to Calcutta in 1953, that "the prestige of the law degree has gone down in recent years, that fewer and less enterprising youngsters are taking up law seriously as an academic interest and that fewer students regard the law as an attractive career."[5] The decline of interest in legal education was mirrored in the condition of legal research in post-independence India. A commission examining the state of Indian universities after independence noted the neglect of the "scientific aspect" of law and an overemphasis on the professional aspect, remarking that "we have no internationally known expounders of Jurisprudence and legal studies. Our colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an arena of profound scholarship and enlightened research."[6]

The life and ideas of Israel's first Prime Minister, Ben-Gurion, were, in many ways, similar to that of Nehru.[7] One similarity was Ben-Gurion's general low regard for law and lawyers. For example, in a 1949 speech, he declared:

> The question is this: Were we created for the legal principle, or was the legal principle created for us? Every jurist knows it is easy to weave legal cobwebs to

still live in the ancient past, and imagine that we can have it back again. Some want the Vedic age, others a reproduction of the early democratic days of Islam . . . We forget that our ancient civilizations, great as they are, were meant for different ages and different conditions . . . many of our traditions and habits and customs, our social laws, our caste system, the position we give to women, and the dogmas which religion has imposed on us, are the relics of a past, suitable in those far-off days but utterly out of joint with modern conditions"). See also Jawaharlal Nehru, *The Discovery of India* (Delhi: Oxford University Press, 1985), 87, 95, 256 (criticizing ancient Indian law and society for their rigidity and the absence of a developed notion of individual rights).

[5] J. D. M. Derrett, "The Law Student and Legislation," in *Anthology of University College of Law Centenary Celebration 1909–2009* (Calcutta: Registrar of the University of Calcutta, 2010), 165. On the decline in the prestige of the Indian legal profession in the post-independence period, see also Yves Dezalay and Bryant G. Garth, *Law as Reproduction and Revolution: An Interconnected History* (Oakland, CA: University of California Press, 2021), 101–2.

[6] University Education Commission, *The Report of the University Education Commission (December 1948–August 1949)*, reprint ed. (Simla: Government of India Press, 1962), Vol. 1, 224. See also Madhusudan Majumdar, "Practical versus Scientific Legal Study in India," *Calcutta University Law College Magazine* 27 (1959): xv; B. B. Misra, *The Indian Middle Classes: Their Growth in Modern Times* (London: Oxford University Press, 1961), 331.

[7] See, e.g., Khinvraj Jangid, "Imagining Nations, Creating States: Nehru, Ben-Gurion and an Analogical Study of India and Israel in Post-Colonial Asia," *Israel Studies* 26 (2020): 73.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

prove and disprove anything . . . As a [former] law student, I know that jurists are experts at twisting every text, inventing convoluted arguments, and confusing interpretations, and the simple and straightforward approach of the layperson, who is not familiar with the many massive volumes of legal scholasticism, is preferable. Knowledge of reality and factual knowledge are required, and these should be the basis for decision-making, not legal quibbling.[8]

As for Jewish law, Ben-Gurion had little interest in the topic. While the Bible, associated with the notion of ancient Jewish sovereignty and with the universalist and humanistic messages of the prophets, played a major role in his thought, Ben-Gurion, like many secular Jews of his generation, did not view either biblical or post-biblical Jewish law as a significant part of the core of Jewish identity.[9]

While the leaders of the newly established states of India and Israel did not view law as an important aspect of their nation-building project, legal research in both places continued. Many textbooks on jurisprudence were published in postcolonial India. Some of these works argued that the Indian contribution to jurisprudence was to be found in the ability of Indians to synthesize conflicting jurisprudential approaches;[10] some talked about the spiritual nature of Indian

[8] "Mo'etset ha-Medinah ha-Zmanit: Ha-Yeshivah ha-Tesh'a-'Esreh (September 23, 1948)," in *Mo'etset ha-'Am: Yeshivot 1–4 . . . : Protokol ha-Diyunim* (Tel Aviv: n.p., 1949), 17. For recent discussions of Ben-Gurion's attitude to the law, see, e.g., Nir Kedar, *David Ben-Gurion and the Foundation of Israeli Democracy* (Bloomington, IN: Indiana University Press, 2021); Schnitzer, "Ben-Gurion." Ben-Gurion's attitude toward lawyers reflected a more general desire of the new Israeli state to shape the behavior of its citizens using education and social norms rather than law. See Assaf Likhovski, *Tax Law and Social Norms in Mandatory Palestine and Israel* (New York: Cambridge University Press, 2017), 149–246.

[9] See, e.g., Gideon Katz and Nir Kedar, "Ha-Yahadut be-'Eyney Intelektu'alim Yisra'elim Hilonim," *Tarbut Demokratit* 14 (2012): 93, 123–4; Kedar, *David Ben-Gurion*, 141.

[10] The term "synthetic jurisprudence" was already used in the 1920s in Karunamy Basu's work to designate the amalgamation of various jurisprudential approaches (analytical, historical, comparative, sociological, functional, and teleological). See Karunamay Basu, *The Modern Theories of Jurisprudence* (Calcutta: University of Calcutta, 1925), Vol. 1, vii–viii; Karunamay Basu, *The Modern Theories of Jurisprudence* (Calcutta: University of Calcutta, 1929), Vol. 2, v–vi. In the post-independence period, the leading exponent of what was dubbed the "synthetic" approach was Minocher Jehangirji Sethna, the self-proclaimed "Founder and President" of the grandly named "Indian School of Synthetic Jurisprudence." See, e.g., M. J. Sethna, "Synthetic Jurisprudence," *Calcutta University Law College Magazine* 24 (1956): 16, 18; M. J. Sethna, *Jurisprudence*, revised and enlarged 2nd

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

jurisprudence;[11] and others suggested that the distinctive nature of Indian jurisprudence was to be found in its "Third World" or socialist nature.[12]

As for the study of Hindu law, in a lecture delivered in 1943, the legal scholar Nares Chandra Sen Gupta urged his listeners to place more emphasis on the academic rather than the practical study of law and jurisprudence, and called for the establishment of "a school for the

ed. (Girgaon: Lakhani Books, 1959). Unfortunately, "synthetic jurisprudence" turned out to be more of a slogan than a fully developed jurisprudential theory. See Rajeev Dhavan, "Means, Motives and Opportunities: Reflecting on Legal Research in India," *Modern Law Review* 50 (1987): 725, 742n73 (citing Paton's disparaging comment on Sethna's work).

[11] See B. A. Masodkar, *National Jurisprudence: Need and Approach* (Nagpur: Shree Ram Trust, 1974), 27–8 (arguing that "India's gift" to the world was the mission of "the spiritualisation of the human race," giving the world "spiritual knowledge," which was "silent" like "the dew that falls unseen and unheard, yet brings into bloom masses of roses," and, in more practical terms, translated into values such as the emphasis on social and communal norms and distributive justice); S. K. Purohit, *Ancient Indian Legal Philosophy: Its Relevance to Contemporary Jurisprudential Thought* (New Delhi: Deep & Deep, 1994), 240–1, 245 (containing a chapter entitled "A Plea for Spiritual Jurisprudence," in which the author suggested that legal theory should be rescued from the "octopus of Western influence" and "spiritualised," a process that, he argued, would lead to "integration, harmonisation and synthesis"). It might also be interesting to compare these works to post-independence Indian (or Pakistani) theoretical works on Islamic law, such as Asaf A. A. Fyzee, *Outlines of Muhammadan Law* (Calcutta: Oxford University Press, 1949).

[12] See Radhabinod Pal, *The History of Hindu Law in the Vedic Age and in Post-Vedic Times down to the Institutes of Manu* (Calcutta: University of Calcutta Press, 1958), 394–8; Masodkar, *National Jurisprudence*, 110 (calling for the creation of a jurisprudence based on "social secular spiritualism" and inspired by the "shining pilgrimage of the souls" from Manu, through Marx, to Gandhi); Purohit, *Ancient Indian Legal Philosophy*, xi (noting that "our country . . . is wedded to achiev[ing] a Socialistic Pattern of Society but little do we realise that in Ancient India, the Dharmashastra had for its objective the everlasting welfare of mankind . . ."); V. R. Krishna Iyer, "Towards a Third World Jurisprudence," in *Law versus Justice: Problems and Solutions* (New Delhi: Deep & Deep, 1981), 132; S. N. Dhyani, *Jurisprudence: A Study of Indian Legal Theory*, 2nd ed. (New Delhi: Metropolitan Book Co., 1985), 19–21 (mentioning "home-spun jurisprudence harmonising, reconciling and furthering the needs of the people" and making "law for little Indians"); Aakash Singh Rathore and Garima Goswamy, *Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law* (London: Routledge, 2018), 78 (mentioning Justice Krishna Iyer's "Gandhian" interpretative approach seeking to interpret laws with a view to assisting "the poorest and the weakest man whom you may have seen"). It should be noted that the term "jurisprudence" sometimes referred to case law in these works rather than legal theory, specifically designating the constitutional decisions of the Indian Supreme Court.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

study of Hindu law" at the University of Calcutta. He even suggested using the Tagore Law Lectures endowment to create:

> . . . a permanent school under a Professor who will work for years, so that a succession of such professors and scholars will be enabled in [the] course of time to produce a history of ancient Indian law, which by the seriousness of the research and accuracy of the results, will be able to take its place by the side of the best histories of Roman Law.[13]

However, it seems that this call went unheeded. After Indian independence, there was little interest among Indian academics, judges, and practicing lawyers in studying, researching, and teaching Hindu law.[14]

The decline in interest in the academic study of Hindu law was accompanied by legislative reforms that sought to limit the impact of this legal system on the law of India following independence. Building on proposals from the 1940s, the Indian Parliament enacted the four Hindu Code Bills, which addressed marriage; succession; minority and guardianship; and adoptions and maintenance. The four acts, passed in 1955 and 1956, standardized and modernized the personal laws of Hindus (including Sikhs, Buddhists, and Jains). They included provisions that prohibited polygamy, allowed divorce, expanded female inheritance rights, and standardized adoption procedures.[15]

A more comprehensive reform of India's personal law system was envisioned in the Indian Constitution, which includes a directive that the state shall endeavor to establish a Uniform Civil Code, aimed at replacing the diverse religious personal laws inherited from the colonial period with a single set of civil rules applicable to all citizens, regardless of religion. However, this reform has not been implemented. Segments of the Muslim minority have historically

[13] See N. C. Sengupta, "Hints on an Historical Study of Hindu Law," *Calcutta University Law College Magazine* 13 (1943): 7, 18.

[14] See Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (New Delhi: Oxford University Press, 2003), 39; Werner Menski, "Hindu Law in Modern Times: How Hindu Law Continues in Modern India," in *The Oxford History of Hinduism: Modern Hinduism*, ed. Torkel Brekke (Oxford: Oxford University Press, 2019), 244, 254–5.

[15] See, e.g., Rina Verma Williams, "Hindu Law as Personal Law: State and Identity in the Hindu Code Bills Debates, 1952–1956," in *Hinduism and Law: An Introduction*, eds. Timothy Lubin, Donald R., Davis Jr., and Jayanth K. Krishnan (Cambridge and New York: Cambridge University Press, 2010), 105, 105–19.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

opposed it, viewing it as a threat to religious autonomy, and in recent decades, the Uniform Civil Code has become closely associated with the political agenda of the Bharatiya Janata Party (BJP), India's current ruling party.[16]

Nevertheless, it would be wrong to assume that Hindu law does not influence the modern Indian legal system. Indeed, legal scholar Werner Menski has argued that the jurisprudential principles undergirding Hindu law – which do not accept the positivist identification of the notion of "law" with state law, reject the sharp distinction between law and morality, emphasize the importance of self-control and call for the use of social rather than legal norms, and also see custom as an important source of law – have had a *growing* influence on Indian society. Additional aspects of contemporary Indian law that, according to Menski, prove the impact of Hindu jurisprudential notions on twenty-first-century Indian law include the willingness to recognize differential statuses rather than unquestioningly accepting the abstract concept of equal citizenship or the emphasis on duties rather than on rights. Menski also mentions in this context the words of Indian Prime Minister Atal Bihari Vajpayee, one of the founders of the BJP, who argued in 2001 that Indian identity is based on ethics and morality, in contrast to the Western idea of the "rule of law."[17] These words reflect the broader desire of today's Hindu nationalists to emphasize the importance of ancient Indian history, traditions, and values, and contrast them to Western law and its values.[18]

A concrete expression of this desire to emphasize the particularist character of Indian law by connecting it to Indian traditions can be found in the realm of criminal law reforms. In 2024, India replaced its Penal Code, Evidence Act, and Code of Criminal Procedure (all of which were British enactments either created during, or derived from, the colonial era) with new legislation. While these reforms were

[16] See, e.g., Manjari Katju, "The History of Hindu Nationalism in India," in Brekke, ed., *Modern Hinduism*, 203, 211–12.

[17] Menski, *Hindu Law*, 39, 59–60, 66, 68; Menski, "Hindu Law in Modern Times," 245.

[18] See, e.g., Christophe Jaffrelot, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, trans. Cynthia Schoch (New York: Columbia University Press, 2019), 169–75; Raja M. Ali Saleem, "Hinduism, Hindutva and Hindu Populism in India: An Analysis of Party Manifestos of Indian Rightwing Parties," *Religions* 12 (2021): 803.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

officially presented as part of the process of modernizing the law, they were simultaneously framed as a reassertion of Indian civilizational values. In describing the reforms Amit Shah, the Indian Minister of Home Affairs (and a leading BJP politician) said that the new codes reflected the "Indian spirit." The criminal justice system, he asserted, is "becoming completely 'Swadeshi' (made-in-India)," echoing the "Indian ethos." This ethos, he explained, was based on the promotion of "nyay" (justice) instead of "dand" (punishment).[19] The Indian government also characterized the enactment of the three new codes as part of a process of "decolonizing" Indian law. Some critical scholars argue that the "deployment of the language of decolonization may be a means to consolidate … Hindu nationalism," by contrasting Western law with an essentialized (and therefore false) version of "Indian culture and tradition."[20]

The cultural nationalist ideas which are now being promoted by BJP politicians are indirectly linked to the intellectual legacy of the Indian scholars discussed in this book. The reformer of the University of Calcutta, Asutosh Mookerjee, played a pivotal role in mentoring many early twentieth-century legal scholars at the University of Calcutta and beyond. His son, Syama Prasad Mookerjee, it might be recalled, was a colleague of Radhabinod Pal at the University of Calcutta. The younger Mookerjee is also widely recognized as a key ideological forerunner of the BJP and is accordingly revered by the party and its supporters.[21] However, the body of scholarship that Asutosh Mookerjee's followers created is all but forgotten.

[19] "Focus on 'Nyay' instead of 'Dand': Amit Shah Welcomes 'Swadeshi' Criminal Laws," *Economic Times Online*, July 1, 2024, https://economictimes.indiatimes.com/news/india/criminal-justice-system-becoming-completely-swadeshi-amit-shah-on-new-criminal-laws/articleshow/111399264.cms?utm_source=contentofinterest&utm_-medium=text&utm_campaign=cppst; Ministry of Home Affairs, "Union Home Minister and Minister of Cooperation Shri Amit Shah Holds a Press Conference in New Delhi on Three New Criminal Laws, Calls the Laws Victim-Centric and Justice-Oriented," July 1, 2024, www.pib.gov.in/PressReleasePage.aspx?PRID=2030088&utm.

[20] See Rishika Sahgal, "Decolonizing Criminal Law in India," in *The Routledge International Handbook on Decolonizing Justice*, ed. Chris Cunneen (London: Routledge, 2023), 391, 392–3.

[21] See Christophe Jaffrelot, *The Hindu Nationalist Movement in India* (New York: Columbia University Press, 1996), 51; *Dr. Syama Prasad Mookerjee: A Selfless Patriot* (New Delhi: Dr. Syama Prasad Mookerjee Research Foundation, 2017), https://spmrf.org/spmookerjee/dr-spm-a-selfless-patriot.pdf.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

Turning now to Israel, the decade after 1948 saw the publication of several books on legal theory.[22] There was also some practical, scholarly, and pedagogical interest in Jewish law. In the 1950s, Israeli legislative drafters sometimes attempted to use Jewish law notions in new legislation. One of the first justices appointed to the Israeli Supreme Court, Simha Assaf, the former Rector of the Hebrew University, was an expert on Jewish law, and his appointment as a judge was seen as a way to introduce Jewish law notions to Israeli case law. Several quasi-academic and academic institutions operating in Israel in the 1950s and early 1960s were devoted to studying Jewish law. One of these institutions was the Harry Fischel Institute, established in 1932 and affiliated with the Chief Rabbinate. There was also a short-lived institute for the study of Jewish law established by the Israeli Ministry of Justice after Israeli independence. The curriculum of the newly established Faculty of Law at the Hebrew University in the 1950s contained required courses on Jewish law. In 1963, the Hebrew University established an academic Institute for the study of Jewish law. This body was headed by Menachem Elon, a Tel Aviv School of Law and Economics graduate. Elon's agenda, as an academic scholar and later as an Israeli Supreme Court justice, was to continue the Jewish legal revival project championed by the founders of the Tel Aviv School of Law and Economics. Some professors teaching at the Tel Aviv School in the 1950s, including Eisenstadt and Dikshtein, continued studying and teaching Jewish law driven by the same scholarly motivation that guided their work during the period of the British Mandate.[23]

[22] See, e.g., Eliezer Malhi, *Taskir Toldot ha-Mishpat be-Erets Yisrael* (Tel Aviv: Beyt ha-Sefer ha-Gavohah le-Mishpat vele-Kalkalah, 1950); Alfred Witkon, *Mishpat ve-Hevrah* (Tel Aviv: Dvir, 1955); Gad Tedeschi, *Mavo le-Torat ha-Mishpat*, ed. Aharon Barak (Jerusalem: Mif'al ha-Shikhpul, 1958); Eliezer Malhi, *Yesodey ha-Mishpat be-Yisrael*, ed. Y. Yonah (Tel Aviv: Agudat ha-Studentim shel ha-Universitah be-Tel Aviv, 1959).

[23] Y. Ofir, "Makhon Harry Fischel bi-Yerushalayim," *Herut*, June 9, 1949; "Dr. Cohen be-Rosh ha-Makhon le-Heker ha-Mishpat ha-'Ivri," *Haaretz*, January 25, 1950; Yitzhak Ahi'yosef, "Mifa'alim Talmudiyim Merkaziyim bi-Yerushalyim," *Herut*, January 25, 1955; Moshe Unna, "'Al-ma Anu Nilhamim," *Ha-Tsofeh*, 22 July 1955; "Ha-Makhon le-Heker ha-Mishpat ha-'Ivri Hehel be-'Avodato bi-Yerushalayim," *Davar*, January 6, 1963; Arye Edrei, "Madu'a Lanu Mishpat 'Ivri?" *'Iyuney Mishpat* 25 (2001): 467, 467–8, 474–5; Guy Kles, "Universitah ba-Galut: Ha-Historyah shel ha-Hinukh ha-Mishpati ba-'Asor ha-Rishon la-Medinah," *Mishpatim* 41 (2012): 605,

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

However, the influence of Jewish law on Israeli law remained insignificant.[24] Most Israeli politicians, government officials, and legal scholars did not identify with the ideology of Jewish legal revival. Instead, they favored a vision of the modernization and Westernization of the legal system inherited by Israel from the Ottoman and British periods. In the 1950s, the Israeli Ministry of Justice created a flagship program on comparative law: the Harvard–Brandeis Cooperative Research on Israel's Legal Development Program. This legal research project was established jointly by the State of Israel and Harvard University (joined later by Brandeis University). The program sought to provide comparative law data on the legal regimes of various modern states, data that would be used to draft new Israeli legislation. Attempts by Israel's Chief Rabbi, Isaac Herzog, and by Yeshiva University Professor, Samuel Mirsky, to participate in the program and use it as a platform for the study and codification of Jewish law were rebuffed by the officials of the Israeli Ministry of Justice.[25]

Just as in the case of India, in Israel, too, the last few decades have witnessed a resurgence of political interest in ancient religious traditions and also legal ones. This trend is associated with the decline in the political power of the secular Founding Fathers' generation that established the State of Israel, coupled with the rise in power of right-wing and religious parties. In 1977, the Likud party came to power in Israel. This party, initially secular and liberal, gradually aligned itself with the conservative and religious side of the Israeli political spectrum.

In 1980, under a Likud-led government, the Israeli Parliament enacted the "Foundations of Law Act." The origins of this Act were not rooted in deliberations about the optimal connection between Israeli and Jewish law. Instead, the Act sought to answer the technical question of which sources Israeli courts should turn to when gaps arise in existing law, instead of relying on English law as

631–3; Arye Edrei, "Lo Posek Ani?! Menachem Elon: Shofet o-Posek Halakhah," in *Halakhah u-Mishpat: Sefer ha-Zikaron le-Meanchem Elon*, eds. Arye Edrei et al. (Tsafririm: Nevo, 2018), 45, 48.

[24] Arye Edrei, "Madu'a lanu," 467–8, 474–5; Arye Edrei, "Lo Posek Ani?!" 48.

[25] See Assaf Likhovski, "Argonauts of the Eastern Mediterranean: Legal Transplants and Signaling," *Theoretical Inquiries in Law* 10 (2009): 619, 645–7.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

they had during the British Mandate period. The vague formulation that was ultimately adopted, as a result of a compromise, stated that judges should turn to the "principles of freedom, justice, equity and peace of Israel's heritage" (rather than to "Jewish law").[26]

Since its enactment in 1980, the Foundations of Law Act has failed to significantly impact Israeli case law. The vagueness of its provisions, coupled with the fact that secular judges still dominate the Israeli judiciary, has meant that, in practice, there has been relatively little use of Jewish law in Israeli case law.[27] However, as Israeli society and its politics have become less secular in recent years, the desire among politicians in the Israeli Parliament to force the courts to turn to Jewish law has intensified. A 2018 amendment to the Foundations of Law Act, initiated by members of parliament belonging to the Likud, as well as Religious-Zionist and Ultra-Orthodox parties, amended the Act by inserting the term "Jewish law" before the vague term "Israel's heritage." Thus, the amended Act now calls on judges to use "the principles of freedom, justice, equity and peace of Jewish law and Israel's heritage" in filling gaps in the law. Notwithstanding this amendment, courts are still reluctant to turn to Jewish law.

The legislators who revised the Foundations of Law Act in 2018 are probably not familiar with the works and ideas of the interwar Jewish scholars that I discussed in this book. Nor do they seem to share a similar ideological outlook. Many of the interwar scholars were secular, Westernized, and firmly opposed to rabbinical involvement in the reform of Jewish law, whereas most contemporary legislators advocating for a greater role for Jewish law in Israeli law today hold significantly more traditional views.

Thus, in both India and Israel, the decline in interest in ancient religious traditions (including law) immediately after independence has been reversed in recent decades. In India and Israel (but also in the Islamic world and the Far East), some modern politicians and

[26] See Nir Kedar, *Law and Identity in Israel: A Century of Debate* (Cambridge: Cambridge University Press, 2019), 101–8.

[27] See, e.g., Daniel B. Sinclair, "Jewish Law in the State of Israel," *Jewish Law Annual* 11 (1996): 397, 411–15; Shimon Shetreet and Walter Homolka, *Jewish and Israeli Law: An Introduction* (Berlin: De Gruyter, 2017), 336–7; Ron Harris, "History and Sources," in *The Israeli Legal System: An Introduction*, eds. Christian Walter et al. (Baden-Baden: Nomos, 2019), 15, 24.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

intellectuals claim, as part of a more general rejection of Western liberal values, that there is an inherent tension between the institutions, norms, and values of the West and local religious traditions. Interest in non-Western traditions has therefore morphed and reappeared in the early twentieth century in a new, more nationalist guise. In both India and Israel, nationalist parties such as the BJP and Likud are making political use of ancient traditions in a bid to move away from the secular and modernist legacy of the early post-independence period.[28] For example, in India, the commitment of Hindu nationalists to democracy (in the sense of majoritarian rule), and even claims that India is "the mother of democracy," are now accompanied by authoritarian impulses.[29] In Israel, in recent decades, alongside the still unsuccessful attempt to compel the courts to make greater use of Jewish law, we have witnessed the rise of new forms of illiberal Jewish fundamentalism among the Religious Zionist section of Israeli society. Some of the thinkers and politicians associated with these new forms of fundamentalism reject Western democracy and its liberal values in the name of what they (falsely) claim is Judaism.[30]

However, Hindu and Jewish traditions are not uniform and homogenous in the way that modern political ideologies often are. Ancient normative systems that have existed for thousands of years are deep, rich, and multi-vocal. They can be used to further anti-democratic and anti-liberal values and practices: to mark insiders and outsiders, friends and enemies of the nation, and to create divisive social hierarchies within national communities. One can also find in

[28] See, generally, Michael Walzer, *The Paradox of Liberation: Secular Revolutions and Religious Counterrevolutions* (New Haven, CT: Yale University Press, 2015); Sultan Tepe, Keith Simonds, and Michael C. Dirksen, "The Emergence of Religious Populism? Insights from Israel, India, and Turkey," *Populism* 5 (2022): 1.

[29] See, e.g., Suhasini Haidar, "India Is Indeed the Mother of Democracy, Says PM Modi Citing Mahabharata and Vedas," *The Hindu*, March 29, 2023, www.thehindu.com/news/national/india-mother-of-democracy-home-to-idea-of-elected-leaders-much-before-rest-of-world-pm-modi/article66675267.ece; Pratap Bhanu Mehta, "Hindu Nationalism: From Ethnic Identity to Authoritarian Repression," *Studies in Indian Politics* 10 (2022): 31, 43–5.

[30] See, e.g., Avi Ma'oz, "Kol ha-Dorot lo Halmu 'al ha-Demokratyah ha-Yehidah ba-Mizrah ha-Tikhon," *Kipa Website*, April 21, 2021; Hagi Ben Artzi, "Mi she-Rotseh Demokratyah she-Yisa' Le-ARHAV," *Srugim Website*, February 17, 2023. See also "Ze Ma'avak 'al Nishmat ha-Yahadut, Lo Rak 'al Nishmat ha-Medinah," *Musaf Calcalist*, March 23, 2023.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012

them universal values and humanistic messages that resonate with modern democracy and modern liberal ideas.[31]

Looking back at the works of the early twentieth-century legal scholars discussed in this book may provide a more nuanced perspective on religious legal traditions than the one currently offered by contemporary politicians and intellectuals in India and Israel who advocate authoritarian and illiberal policies. The particularism of the Indian and Jewish scholars of the early twentieth century coexisted side by side with universalist tendencies. While they were keen to study their ancient systems, this was not to highlight their difference from Western legal systems but to emphasize their compatibility with Western democratic and liberal notions. Nationalist particularism led, in the case of the early twentieth-century Indian and Jewish scholars, to a desire to embrace humanism and universalism. The scholars discussed in this book sought to reconcile modernity and tradition, Western and non-Western norms and values, depicting in their works religious legal systems not as the binary opposites of Western law and values but as its twins. Indeed, sometimes they even argued that the very origins of modern Western law and its institutions and values were to be found in ancient Hindu and Jewish law. Their ideas are, therefore, important not merely as matters of historical interest. They are vital to understanding, and influencing, debates unfolding today over the role of democratic and liberal norms, institutions, and values in India, Israel, and many other parts of the world.

[31] See, e.g., Stuart Gray, "History, the Hindu Right, and Subversion of Brahmanical-Hindu Political Thought," in *The Oxford Handbook of Comparative Political Theory*, eds. Leigh K. Jenco, Murad Idris, and Megan C. Thomas (New York: Oxford University Press, 2020), 240; Leonard J. Greenspoon, ed., *Is Judaism Democratic? Reflections from Theory and Practice Throughout the Ages* (West Lafayette, IN: Purdue University Press, 2018); James Loeffler, "A Tradition in Crisis: Human Rights and Jewish Politics Reconsidered," *Journal of the Council for Research on Religion* 6 (2025): 1. See, generally, Pauline Kollontai and Friedrich Lohmann, eds., *On the Significance of Religion for Human Rights* (London: Routledge, 2023).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 12:37:05, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009699877.012