

## Book Review

### Roberta Rosenthal Kwall: *The Myth of the Cultural Jew. Culture and Law in Jewish Tradition.* Oxford University Press, Oxford 2015.

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How does a law professor in the United States today approach a problem in a religious community that spans the globe and stands on more than three thousand years of recorded history? Professor Roberta Rosenthal Kwall at Depaul University School of Law says she is engaging in ‘cultural analysis’ in her new book, *The Myth of the Cultural Jew*. I suspect she is doing that and more.

Professor Kwall’s book explores what it means when a Jew today says that he or she is a ‘cultural Jew’. This term is meant to be a shorthand way to indicate that, while the person self-identifies as Jewish, that person is not necessarily a believer in the theology nor a participant in the religious practices of Judaism. In Israel, the country with the largest number of Jews in the world today, the number of secular Jews is increasing rapidly. In the United States, the country with the second largest number of Jews, the rates of assimilation into the broader culture and inter-marriage with non-Jews are both accelerating. Thus, the underlying concern of this book is how Judaism will flourish going forward.

The book starts with the premise that even a cultural Jew ‘is inevitably molded and shaped by the Jewish tradition, which includes Jewish law’ (Kwall 2015, xiii). Kwall defines the Jewish tradition, known as the *mesorah*, very broadly, ‘as the entire chain of the Jewish tradition handed down over the generations’ (Ibid.). The *mesorah* incorporates both the Jewish religious law, *halakah*, and Jewish customs, the *minhag*. The Jewish religious law is important to Kwall’s inquiry because, as she explains, Judaism is a religion of laws. This religion welcomes people to ask questions and seek answers; it even allows doubts as to faith. It is the practices involved in observing the

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religious law, however, that are an integral part of what makes a person Jewish.

The primary methodology that Kwall uses to examine her premise is cultural analysis. This approach assumes that law and culture are inevitably intertwined; law helps to shape culture, and culture helps to shape law. Together, culture and law define a community and its tradition. A cultural analysis of a particular legal system acknowledges that the law changes over time, due to influences both within and outside the legal system and within and outside the culture. In this way, cultural analysis accounts for multiple values and voices within a legal system and encourages lively discourse and debate as a systemic norm.<sup>1</sup> Cultural analysis is an approach that can help identify how a community maintains enough of its core, cohesive identity to still exist while undergoing the very developments that may be needed to allow it to continue. Just how far can a culture become untethered from its law before it stops being that particular culture? Just how much can Jewish religious law and the practices it requires be diluted before a cultural Jew stops having a culture recognizable as Jewish? And is there some way to infuse new enthusiasm for Jewish religious law back into the lives of cultural Jews, to help maintain the community and its tradition? These are the questions that Kwall tackles in *The Myth of the Cultural Jew*.

After introducing readers to her inquiry and its methodology, Kwall describes the various sources of Jewish law, looking through the cultural analysis lens. She first explains the 'top-down' sources of law, the formal law that comes from recognized authority. The first such source of Jewish religious law is the written law of the Torah, which some Jews understand as revealed directly from a divine source and other Jews understand as being written by divinely inspired people. Within Judaism, there are different schools of thought as to the appropriate role of human interpretation of this original source of law. This multiplicity of perspectives is not a modern phenomenon; it is indeed one that has 'continued down through the ages' (Kwall 2015, 30). As Kwall emphasizes, throughout Jewish history even those who believed in the direct revelation of the law in the Torah understood that human beings must endeavor to figure out how to apply it. There has always been a self-conscious role for human beings in determining Jewish law. Thus, as Kwall asserts, 'Judaism as a religion is set up so that the law essentially is the product of human judgment about God's will' (Ibid., 44).

Inquiries about Jewish law may start with the Torah, but they certainly do not end there. Although many Christians may think that their Old Testament is the scripture of the Jews, the scripture of the Jews actually only starts with the Torah. Kwall explains the origins of another important 'top-down' source of Jewish law, the Talmud. This source of law became solidified when the rabbis helped people apply the Torah to their lives after the destruction of the temple in Jerusalem and the Jews' subsequent exile. To give one quick example, the Torah tells the people to celebrate the Passover festival with a pilgrimage to Jerusalem and a festival meal. But when

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<sup>1</sup> See Kahn 2001, cited in Kwall 2015, 3-8; Mezey 2001, cited in Kwall 2015, 1-11; Sarat & Simon 2001, cited in Kwall 2015, 1-3.

the pilgrimage became impossible, the rabbis emphasized the festival meal instead, and it developed into the Passover seder (Ibid., 43).<sup>2</sup> The comprehensiveness of the Talmud, developed over centuries and covering all aspects of human life, means that practicing Jews today are Talmudic Jews, not Biblical Jews. As a source of law, the Talmud presents certain challenges. Kwall aptly states, 'it is extremely difficult to determine not only the circumstances in which the Talmud actually reaches a consensus, but also the substantive content of any given consensus in certain situations' (Ibid., 20). As the old joke goes, if there are two Jews in the room, there are three opinions.

As the Jews negotiated life in the Diaspora, influences from other legal systems and cultures seeped in. Indeed, the ability to both assimilate some outside influences while still maintaining a distinct identity likely has been the key to the robustness of Jewish law through the millennia. Cultural analysis indeed predicts that this ability to allow change and developments within the tradition will produce a resilient culture. And, as in most legal systems, in Jewish religious law, too, novel legal problems have always been solved 'through creative legal interpretations' (Kwall 2015, 53).

Kwall's cultural analysis lens also makes it easier to recognize the importance of the *aggadah*, the narratives found in each source of Jewish religious law. The Torah and the Talmud teem with narratives, both famous and obscure. It is hard to imagine a Jewish sermon or religious lesson without a narrative, used to convey, quite literally, the moral of the story. Today, secular legal scholars and neuro-scientists alike recognize what the sages of old understood all along: human beings make sense of their world through story telling.<sup>3</sup> And it is this story telling that serves as a bridge between what Kwall calls the 'top-down' and 'bottom-up' sources of Jewish religious law.

As Kwall explains, the 'bottom-up' source of law is the *minhag*, the customs of the people. Over the millennia, the people validated the religious law through their practices. The religious authorities paid attention to popular custom when determining what the law was and encouraged certain folklore and folk practices, while discouraging others. In time, certain popular practices became endorsed religious practices, even though they were not found in the early scriptures. Also, nothing prevented observant Jews from having more stringent practices than *halakah* required. Many of those practices simply became the unquestioned way things were done. Customs tended to develop in reaction to local circumstances, especially in commercial life, and customs were often influenced by other cultures.

Here Kwall's examples provide fascinating histories of long-established Jewish religious practices. To share just one such example, Jews observe the *yarzheit*, the anniversary of a close family member's death. The family lights a twenty-four-hour candle in the home, has the name of the deceased read in the synagogue, and

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<sup>2</sup> Even though the pilgrimage is possible today, Jews around the world still end the Passover seder saying 'next year in Jerusalem' (Maxwell House 2014).

<sup>3</sup> See Rideout 2015. I teach my first-year students to picture the factual story of each new legal case in their minds as if it were a movie, so they can understand and remember it better.

says the mourner's prayer. Lighting candles, reading aloud names of the deceased, and saying special prayers on the death anniversary are practices borrowed from Medieval German monasteries remembering their martyrs. This borrowing took place in response to a local tragedy, when a Medieval German Jewish community was attacked; even the term *yarzheit* is borrowed (Kwall 2015, 77).

A key point Kwall makes is that 'despite considerable uniformity of the tradition overall, there never has been a unified series of practices among the Jewish people, who have lived throughout the majority of their history in the Diaspora' (Ibid., 59). In each place they settled, however, Jews had their own, recognizable sub-culture.<sup>4</sup> 'With time, a remarkable consistency in legal practice developed across the Diaspora despite the differences in local customs and surrounding cultures. This outcome is a testament not only to the power of the tradition and its rabbinic authorities, but also to the people's inclination to accept and validate the tradition' (Ibid., 62).

After describing the many historic sources and developmental processes of Jewish religious law, Kwall provides further context for her inquiry by summarizing the various denominations within Judaism today. As she explains, when modernity spread throughout Europe and separated religious life from secular life, the Reform and Conservative movements arose. An even more recent addition is the Reconstruction movement. A major characteristic of Jews who are members of these newer denominations is that they tend to pick and choose those religious practices that they find personally meaningful. The Modern Orthodox movement also has become distinguished from more right-wing Orthodox Judaism. There are also various currents within the denominations. Each denomination has its own approach to Jewish religious law, and Kwall summarizes each approach well. She shows how each version of Judaism includes some degree and type of human decision making in determining Jewish religious law.

Once she has provided this broad and deep context, Kwall turns to showing how a cultural analysis approach may be helpful in working through some of the biggest challenges in and to Judaism today. '[T]his methodology seeks to preserve a tradition's integrity and authenticity while simultaneously justifying the development of the tradition in response to cultural changes' (Kwall 2015, 130). The first half of the book establishes that this very dynamic has been integral to Judaism at least since the beginning of the Diaspora, i.e., for some two thousand years. So Kwall's use of cultural analysis to examine fundamental questions in Jewish religious law today is at once innovative and traditional. Her recognition of the parallels in the two processes of legal analysis and her ability to translate those parallels to people familiar with one or the other is a major contribution. For secular legal scholars, she provides a detailed case study and important proof of the value of cultural analysis. For the Jewish community, she provides a forthright, intellectually honest way to approach current issues, a way that all participants can be comfortable with.

Kwall devotes one chapter to what she calls the 'foundational conflicts'. First

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<sup>4</sup> The separation between Jews and indigenous populations often lead to such high intermarriage rates among Jews that genealogists now can use DNA to identify Jewish ancestry.

she explores the thorny issue of just who is a Jew. This issue often becomes relevant in modern life in the context of marriage, divorce, burial, adoption, and Israel's law of return. At times this issue can impact profoundly both individuals who self-identify as Jewish and those who do not. And it has ramifications for the continuity of Judaism, the underlying concern of the book. Kwall uses cultural analysis to show how each of the major movements within Judaism approaches this issue. She then takes a similar approach to explore issues concerning how to observe *Shabbat*, the Sabbath. These issues, too, impact the lives of many Jews and have ramifications for the continuity of the tradition. Throughout these explorations, Kwall's cultural analysis approach allows inclusion of considerations that have not always been given full recognition, including countervailing approaches found within the tradition historically and perspectives on the fringes that help to clarify the boundaries of core consensus.

Indeed, where Kwall's approach seems particularly promising is in providing a way to analyze issues that on the surface might seem impossible topics for consensus among Jews today. She devotes one entire chapter to the Jewish religious law on homosexuality and another entire chapter to the Jewish religious law on the role of women in synagogue practices. In the chapter on homosexuality, Kwall shares a metaphor that seems to open up infinite possibilities for problem solving. Here Kwall is describing the back-and-forth between two Orthodox rabbis. One rabbi criticizes the other for 'failing to play sufficiently with the *halakah* in a creative way in order to arrive at solutions to the problems being discussed, [...] for not plunging "into the great pool of our tradition, certain that he will be received by water rather than a dry cement bottom"' (Lopatin 2004, 9, quoted in Kwall 2015, 168). Of course water is both fluid and buoying, and this metaphor provides Kwall's central suggestion: look to the fluidity and the support inherent in the Jewish tradition to figure out approaches to today's issues. Jews who know the tradition's religious law already have a vibrant problem solving process and a common language for respectful debate and productive discourse.

Kwall does not hesitate to take on the issues of the day. In her review of the various Jewish movements' views on homosexuality, she highlights the Talmud's insistence that all people be treated with dignity, which in turn suggests paths for reconsidering some of the movements' views. Likewise, she shows how the prohibition on women's public Torah reading may be an instance of historic 'bottom-up' cultural practices becoming legally endorsed. This acknowledgment, too, opens up paths for reconsideration. Using the cultural analysis approach, Kwall's study of each issue includes a wide variety of Jewish legal and cultural sources, enriching the analysis. Her approach offers the possibility that eventually Judaism may find authentically Jewish answers to any issue that confronts it. She does not assume every answer will be liberal, leftist, or new; indeed she makes clear that sometimes cultural analysis may lead to more conservative results or even maintenance of the status quo. Nonetheless, a sense of possibility infuses this book. Perhaps the one openly gay Orthodox rabbi or the three Orthodox female spiritual leaders described

in the book are just historic anomalies. But they also are now known possibilities, which people now *have* heard of. When a cultural analysis includes their voices, too, the debate includes even more perspectives to aid in legal problem solving.

As if tackling all of these issues were not enough, Kwall also includes a chapter on how Jewish religious law is currently developing in Israel and another chapter on how it is currently developing in the United States. She presents a clear-eyed view of the obstacles to that development in each community. Underlying all of her expositions are the lessons of cultural analysis: that law and culture are constantly influencing each other and that they allow for multiple perspectives, robust dialogue, and developments that maintain the authenticity of the tradition. This approach allows her to discern instances of renewed enthusiasm for Jewish religious law. For example, she describes how the Reform movement in the United States is incorporating some religious practices it previously eschewed and how some secular and observant Israelis join together in a popular pre-*Shabbat* prayer gathering. Professor Kwall also sees promise in a very traditional source, the *aggadah*, the narratives that have always made the law accessible to the people. Ultimately, her book is reasonably optimistic about the prospects for its central concern for Jewish continuity.

The sheer breadth and depth of Jewish law and culture that Kwall comfortably explores as she supports her points are reason enough to read this book. Indeed, few books about a religious tradition extant today need to consider the influences of the Roman, Greek, Ottoman, Iberian, French, Hapsburg, and British empires. If you knew nothing about Jewish law and culture before reading this book, it would certainly give you a solid survey course. Kwall has done excellent work defining terms and explaining examples for the uninitiated. I tried to read this book thinking about the information needs of a cultural Jew who might be drawn to it by the title, and I could only find a few references—among hundreds of clearly explained references—that a person without a Jewish education might not understand.<sup>5</sup> Even readers who have had a strong Jewish education may not be well-versed in every topic explored, because Kwall examines the practices and social movements of Jews across the spectrum, from far right to far left, and delves into pockets of history that are not part of the standard curriculum.

The respect with which Kwall treats each group within Judaism is another hallmark of this book. In addition to the major religious movements within Judaism, she also accounts for the wide variation in practices between *Ashkenazim*, with their cultural origins in Northern Europe, and *Sefardim*, with their cultural origins in the region encircling the Mediterranean Sea. Kwall pretty studiously avoids any vocabulary that would place a value judgment on a particular movement's practices or beliefs. A member of one movement within Judaism will learn about the practices and beliefs of another movement through this book, without being made to feel that any one is more or less valued. (As I read, I tried to figure out which movement Kwall

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<sup>5</sup> In a testament to the breadth of Jewish religious law, these include one reference to a tuna fish sandwich (Kwall 2015, 105) and another to the prohibition against descendants of the ancient priests entering a cemetery (Ibid., 37).

belongs to, and I could not.) This comfort with the multiplicity within a tradition is one of the benefits of viewing a legal system through the lens of cultural analysis. As Kwall argues convincingly, it also is a helpful approach for an examination of the interplay between Jewish law and culture in particular, exactly because they have been shaped in so many places over so much time, through a parallel process.

Indeed, in the end, it is that very process of Kwall's analysis that is the *tour de force* here. As good law professors do in their classes, she models what she teaches even as she is teaching it. As a law professor in the United States, she has had long practice teaching her students to develop a tolerance for the uncertainty inherent in the United States' legal system. That system synthesizes the traditions of the common law, developed over time by the judiciary, with ever growing bodies of statutory and regulatory law, all taking place within the context of a multi-cultural society. Throughout *The Myth of the Cultural Jew*, a similar tolerance for uncertainty—created by the multiple sources of law within the Jewish legal system and the multi-cultural influences upon it—becomes abundantly clear. Kwall does not just explain how to do cultural analysis here; she does cultural analysis. That process has remarkable similarities to many aspects of traditional Jewish legal analysis. So in the end, what Kwall is really doing is 'plunging into the pool' herself, participating in the dynamic process of Jewish religious law. She invites readers to join her.

## **Bibliography**

Kahn, Paul W.: 'Freedom, Autonomy, and the Cultural Study of Law', 13 *Yale Journal of Law & Humanities* (2001) 141-171.

Kwall, Roberta Rosenthal: *The Myth of the Cultural Jew: Culture and Law in Jewish Tradition*. Oxford University Press, Oxford 2015.

Lopatin, Asher: 'What Makes a Book Orthodox? *Wrestling with God and Men*, by Steven Greenberg'. 4 (2) *Edah Journal* (2004) 1-11.

Maxwell House: *Passover Haggadah*. Kraft Foods 2014.

Mezey, Naomi: 'Law as Culture'. 13 *Yale Journal of Law & Humanities* (2001) 35-67.

Rideout, J. Christopher: 'Applied Legal Storytelling: A Bibliography'. 12 *Legal Communication & Rhetoric: Journal of the Association of Legal Writing Directors* (forthcoming 2015).

Sarat, Austin & Jonathan Simon: 'Beyond Legal Realism?: Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship'. 13 *Yale Journal of Law & Humanities* (2001) 3-32.