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Teaching Jewish Law in American Law Schools – Part II: An Annotated Syllabus

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Teaching Jewish Law in American Law Schools–Part II:  
An Annotated Syllabus

Samuel J. Levine*

INTRODUCTION

In recent years, American legal scholarship has increasingly turned to the Jewish legal system as a source of comparison and contrast for questions that arise in American legal discourse.¹ Concomitantly, a growing number of American law schools have introduced into their curriculum a course in Jewish Law. By some estimates, approximately thirty American law schools include courses in Jewish Law as part of their curriculum.² A number of different models

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The syllabus presented here is a variation of the syllabi I have used in the Jewish Law courses I have taught at St. John’s University School of Law and Fordham University School of Law. I gratefully acknowledge that in compiling these syllabi, I gained from the advice and assistance of friends, colleague, and mentors, many of whom shared with me the syllabi they had used in teaching Jewish Law. In addition, I thank Abraham Abramovsky, with whom I taught the course at Fordham.

I also note the recent appearance of a Jewish Law textbook for use in American law schools. See Menachem Elon et al., Jewish Law (Mishpatim): Cases and Materials (1999). Although Professor Elon’s book represents a groundbreaking achievement and is a valuable source for any course in Jewish Law taught in an American law school, the book differs from my own syllabus in its emphasis on Jewish law in the context of modern Israeli law, an approach more consistent with the international law model that I incorporate into my syllabus to a considerably more limited degree.


According to the findings of a recent survey compiled by the Institute of Jewish Law, Touro College / Jacob D. Fuchsberg Law Center, American law schools that offered courses in Jewish Law in 1999 and 2000 included:

University of California at Davis, Benjamin N. Cardozo School of Law, Catholic University, Chicago-Kent College of
exist for such a course, including a comparative law model, an international law model, and a law and religion model, each of which may be modified or combined with one or both of the others.¹

In reality, the precise nature of the Jewish Law course offered in a particular law school is more complex than these models might suggest, as it may be the product of a number of variables, including, but not limited to: (1) the interests and expertise of the instructor or instructors, whose knowledge of both American law and Jewish law varies widely in different schools, and who may have a particular area of scholarly interest in either or both of the legal systems; (2) the interests and backgrounds of the students, who may prefer to study Jewish law in the context of a specific area or methodology of the American legal system, and whose knowledge of or familiarity with the substance of Jewish law often varies not only among different schools but within the same classroom; and (3) the place of the course in the law school curriculum, which may depend on the vision of various groups or individuals in addition to the instructor, including the dean or deans, the faculty as a whole, and the curriculum committee.²

¹ For a discussion of the different models and their respective advantages and disadvantages, see Levine, *Teaching Jewish Law: An Emerging Trend*, supra note 1, at 1042-45.

² Indeed, the titles of the courses offered in different law schools attest to the varied nature of the courses. Such titles include not only more generic references to “Jewish Law,” but also more specific subjects such as: “Bible & Talmud”; “Bioethics & Jewish Law”; “Comparison of American, Israeli and Talmudic Law”; “Comparative Law: Hebrew Law”; “Comparative Social Issues Under Jewish Law”; “Composition of the Talmud”; “Environmental Issues in Classical

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Law, Columbia University, Cleveland State University / Cleveland-Marshall College of Law, DePaul University, Duke University, Emory University, Fordham University, Georgetown University, Harvard University, University of Houston, Northwestern University, Pepperdine University, Saint Louis University, Southwestern University, Texas Tech University, Touro College / Jacob D. Fuchsberg Law Center, University of Utah, Wayne State University, and Yale University.

In addition, the results of prior surveys list Jewish Law courses offered at a number of other law schools in 1994 and in 1996-97, including American University / Washington College of Law, Boston University, Brigham Young University, University of California at Berkeley, University of California at Los Angeles, Duquesne University, Hamline University, New York University, University of Miami, University of Michigan, University of Missouri-Kansas City, Notre Dame University, Pace University, University of Pennsylvania, Rutgers University-Camden, Stetson University, and University of Wisconsin. (Survey findings on file with author.) Finally, a number of other schools, such as St. John’s University, include a Jewish Law course as part of their curriculum but did not offer the course in the years surveyed, while other schools, such as Nova Southeastern University, have added courses in Jewish Law since the survey was conducted.

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The following annotated syllabus is intended for a Jewish Law course that attempts to combine different models and, thus, consists of segments reflecting, to some degree, the goals of each of the three general models listed above. The syllabus is presented in outline form, organized according to different stages of the course, together with annotations describing the purpose of the materials included in each section. In addition to the materials described in the text, alternative materials are suggested in footnotes.

SYLLABUS

I. INTRODUCTION: JEWISH LAW IN THE AMERICAN SCHOOL


These articles serve as an introduction for students who may be interested in understanding the place of Jewish law in American law schools and American legal scholarship. The articles reflect the different perspectives, experiences, and suggestions of three American law
professors who have taught Jewish Law courses in American law schools. Like most of the materials included in the syllabus, these articles appear in journals published at American law schools, which are likely to be accessible to American law students and which also help illustrate to students the acknowledged relevance of Jewish law in American legal scholarship. 6

II. SOURCES AND STRUCTURE OF JEWISH LAW


These works offer a broad introduction to the Jewish legal system, including discussions of the history, sources, structure, and methodology of Jewish law. It is significant that, like nearly all of the materials in the syllabus, these pieces are written by law professors with

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5 See also Levine, Teaching Jewish Law: An Emerging Trend, supra note 1, at 1044-45.
6 Other articles that document and analyze the reliance on Jewish Law in American law and legal scholarship include: Daniel G. Ashburn, Appealing to a Higher Authority?: Jewish Law in American Judicial Opinions, 71 U. DET. MERCY L. REV. 295 (1994); Charles Auerbach, The Talmud: A Gateway to the Common Law, 3 CASE W. RES. L. REV. 5 (1951); Chad Baruch & Karsten Lokken, Research of Jewish Law Issues: A Basic Guide and Bibliography for Students
extensive knowledge of both the American legal system and the Jewish legal system. Though the authors differ to some degree in their approach and emphasis, there is inevitably a fair amount of repetition among these works and, therefore, students should probably not be assigned all of them as required reading. Nevertheless, all of these pieces may be helpful to students as reference tools to be used throughout the semester.

III. LEGISLATION IN JEWISH LAW


Having completed the general overview, the course introduces students to components of the Jewish legal system and Jewish legal theory that parallel those studied and applied in the American legal system, demonstrating broad methodological similarities. For example, both systems distinguish analytically between legislation and interpretation, and the two systems share a number of specific modes of legal interpretation. At the same time, a close look reveals some of the differences between Jewish law and American law, including those arising out of the fundamental distinction between a legal system explicitly based in religion and one based in secular values. Many of the readings present issues in a comparative framework, while others

and Practitioners, 77 U. Det. Mercy L. Rev. 303 (2000); Levine, Jewish Legal Theory, supra note 1; Levine, Teaching Jewish Law: An Emerging Trend, supra note 1; Stone, supra note 1.

7 Other helpful introductions to the Jewish legal system include: AN INTRODUCTION TO THE HISTORY AND SOURCES OF JEWISH LAW (N.S. Hecht et al., eds., 1996); DAVID M. FELDMAN, BIRTH CONTROL IN JEWISH LAW: MARITAL RELATIONS, CONTRACEPTION, AND ABORTION 3-18 (1968); JEWISH LAW AND LEGAL THEORY (Martin P. Golding ed., 1993); NAHUM RAKOVER, A GUIDE TO THE SOURCES OF JEWISH LAW (1994); AARON M. SCHREIBER, JEWISH LAW AND DECISION-MAKING: A STUDY THROUGH TIME (1979). Each of the books on this list could serve as a Jewish Law textbook in its own right, and some of them were intended for that purpose. Professor Rakover’s book, for example, illustrates Jewish legal method by tracking the laws of bailments in primary and secondary sources, from the Torah through the writings of contemporary legal authorities.
discuss only the Jewish legal system. In either case, the implicit comparisons and contrasts to American law will be apparent to American law students.⁸

IV. INTERPRETATION IN JEWISH LAW

A. CIVIL LAW INTERPRETATION


B. RITUAL LAW INTERPRETATION


C. AUTHORITY IN INTERPRETATION


⁸ See also Menachem Elon, *The Basic Norm and the Sources of Jewish Law*, in *Jewish Law: History: History*,


The inclusion of sections on both "civil law" and "ritual law" interpretation helps illustrate the methodological unity that exists within Jewish law, which does not distinguish on an analytical level between laws that relate to explicitly "religious" issues and those that are more commercial in nature. On a substantive level the topics discussed in the section on civil law are generally familiar to American law students, while the discussions of ritual law, though they may be more exotic, also find some fascinating parallels in American law. Finally, although Rabbi Steinzaltz is not a professor in a law school, his writings are particularly valuable, due in part to his ability to present complex matters in a way that is both scholarly and accessible.9


V. ISSUES IN JEWISH LAW THAT PARALLEL ISSUES IN THE AMERICAN LEGAL SYSTEMS

A. CRIMINAL LAW AND CAPITAL PUNISHMENT


B. SELF-INCrimINATION


C. DUTY OF CONFIDENTIALITY


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**D. ABORTION**


Building on the more general and introductory sections on the methodology of Jewish law, the course examines in detail a number of substantive areas of Jewish law that have direct parallels in the American legal system. American law students are likely to have an interest in and at least some knowledge of these issues in relation to American law, thereby facilitating their ability to analyze the issues in the context of Jewish law. Conversely, studying these issues through the perspective of Jewish law may place American law in a new light, potentially leading students to rethink some of the assumptions and approaches of the American legal system. In addition, the excerpts from Rabbi Herring's book offer students an opportunity to apply to primary and secondary sources of Jewish law the textual and analytical skills that the students have developed in law school.

10 It should be noted that several courts in the United States have relied on Jewish law in considering some of the issues discussed in this section. Indeed, the United States Supreme Court cited Rabbi Lamm’s article in two seminal cases involving the Fifth Amendment privilege against self-incrimination. See *Garrity v. New Jersey*, 385 U.S. 493, 497-98 n.5 (1967); *Miranda v. Arizona*, 384 U.S. 436, 458 n.27 (1966). See generally Ashburn, supra note 6.

Reflections on the Construction of Professional Identity

Scholarship and Profession

Symposium on Lawyering and Personal Values--Responding to the Problems of Ethical Schizophrenia

Religion in Lawyering and in Life


For an extensive discussion of self-incrimination, see AARON KIRSCHENBAUM, SELF-INCrimINATION IN JEWISH LAW (1970).


For an extensive discussion of self-incrimination, see AARON KIRSCHENBAUM, SELF-INCrimINATION IN JEWISH LAW (1970).
VI. INTERSECTION OF JEWISH LAW WITH OTHER LEGAL SYSTEMS

A. "THE LAW OF THE LAND"


B. GET LAWS AND KOSHER LAWS


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Classic works on abortion in Jewish law include: J. David Bleich, Abortion in Halakhic Literature, in JEWISH BIOETHICS 155-96 (Fred Rosner and J. David Bleich eds., 2000); FELDMAN, supra note 7, at 251-94; Immanuel Jakobovits, Jewish Views on Abortion, in JEWISH BIOETHICS 139-153 (Fred Rosner and J. David Bleich eds., 2000).

Having analyzed Jewish law largely on its own terms or, on a theoretical level, in a comparative context, the course turns to some of the complex and more practical questions relating to the interaction of Jewish law with other legal systems. Students who have studied conflicts law may recognize parallels to some of these questions, while most American law students will have a working knowledge of the constitutional issues implicated by the legislation of "get laws" and "kosher laws" in the United States. Professor Greenawalt’s article may prove particularly helpful for American law students, as it represents the efforts of an American legal scholar who is admittedly not an expert in Jewish law, but who has undertaken the task of studying the way issues in Jewish law affect American constitutional law.\(^\text{12}\)

**VII. MODERN APPLICATION OF JEWISH LAW IN THE ISRAELI LEGAL SYSTEM**

- Shmuel Shilo, *The Contrast Between Mishpat Ivri and Halakha*, 20 Tradition 91 (Summer 1982)
- Daniel Sinclair, *Jewish Law in the State of Israel*, in An Introduction to the History and Sources of Jewish Law 397-419 (N.S. Hecht et al., eds., 1996).
- Menachem Elon, *The Ethiopian Jews: A Case Study in the Functioning of the Jewish Legal* **Law**

12 Other important works on "the law of the land" include: Hershel Schachter, "Dina De'malchusa Dina": Secular Law As a Religious Obligation, 1 J. HALACHA & CONTEMP. SOC'Y (1981); Shmuel Shilo, Maimonides on "Dina De-Malkhuta Dina (The Law of the State is Law)", 1 JEWISH L. ANN. 146 (1978).


The course concludes with another practical application of Jewish law, examining the role of Jewish law in the Israeli legal system through the works of three Israeli law professors with extensive knowledge of Jewish law. This section, representing the international component of the course, illustrates to students some of the basic differences between Jewish law, which they have thus far been studying, and the law that governs the modern State of Israel. Although Israel is a Jewish state, Israeli law is generally secular in nature. Nevertheless, as the readings describe, certain areas of Israeli law incorporate Jewish law in a way that would violate American notions of the separation of church and state. The final reading, a fascinating analysis of the rescue and absorption of Ethiopian Jews into Israel, provides a fitting closing, combining many of the themes presented throughout the course.\textsuperscript{13}