

STUDIES IN JEWISH LAW

Aryeh Amihay

Details:

RGST 133C, Winter 2018

T R 3:30-4:45

Room: HSSB 2201

Office HSSB 3048

Office Hours: M W 10:00-12:00

aamihay@ucsb.edu

Description and Mission

This course will survey Jewish Law and its influential role in shaping and reflecting Jewish life throughout the ages. Students will become familiar with major law codes, from the Hebrew Bible to the early modern period, and will consider the idiosyncrasies of Jewish law and its various aspects, covering ritual, Jewish home and daily life, as well as common social aspects including torts and contract law.

A main emphasis in this course will be the evolutionary nature of Jewish law, showcasing the development of the legal tradition in Judaism throughout history, and raising questions of continuity and change: is there an essentialist kernel that is sustained throughout the various manifestations of Jewish law, and how conscious are rabbis of their choices to depart from a certain tradition?

Other questions will address the distinction of law as a human construct vs. the view of divine law (e.g., *deorayta* and *derabbanan*); the hierarchy of laws concerning the divine and laws concerning one's fellow; the debate over whether law reflects reality or establishes it (essentialism vs. formalism); the tension of ethics and the law; and the rivalry between faith and practice.

The second half of the course examines the fractured state of Jewish law in contemporary times from a codified tradition of multiple voices to a pluralism of diverse approaches to the law and its function in Jewish life, as well as its responses to contemporary concerns and non-religious institutions. We shall consider the function of religious law in liberal democracies, and the demands for autonomy by religious communities in Israel and the United States.

Writing

The course fulfills a GE writing requirement, and thus emphasis will be placed on academic writing. Each class will begin with a student presenting a paragraph reflecting on something in the readings. Fellow students will offer respectful criticism and suggestions for improvement. Paragraphs must be submitted by 1pm before class. Disrespectful responses to the writing of peers will be penalized.

Tardiness and Absence

Students should not enter class late. Repeated tardiness may result in an F. Students are allowed **four** absences from class. Any further absence, **regardless of cause**, will be penalized. Students with more than seven absences, regardless of cause, will fail the course – no exception.

Grading

- 10% Class participation
- 5% Paragraph presentation
- 5% Respectful response to a classmate's paragraph
- 45% 3 reflections on reading (~500 words each)
- 15% midterm paper
- 20% final exam

All students are required to have one office hour meeting with instructor during the course.

Class 1 (Jan. 9) – Introduction

Kirschenbaum, “A Historical Sketch of the Sources of Jewish Law”
Ginzberg, “The Codification of Jewish Law”
Jackson et al, “Halacha and Law”

Class 2 (Jan.11) – Biblical Law in light of Mesopotamian sources

Laws of Eshnuna (in Hallo, *Context of Scripture*)
Code of Hammurabi (in Hallo, *Context of Scripture*)
The Ten Commandments and the Covenant Code (Ex 20-23)
Wells, “What Is Biblical Law? A Look at Pentateuchal Rules and Near Eastern Practice”

Class 3 (Jan.16) – Biblical Law: The Deuteronomist and the Priestly schools

The Holiness Code (Lev 17-25)
The Deuteronomic Code (Deut 12-22)
Schwartz, “‘Profane’ Slaughter and the Integrity of the Priestly Code”
Levinson, “The Reinterpretation of the Covenant Code’s Manumission Law by the Holiness Code”

Class 4 (Jan. 18) – Second Temple Judaism: Adherence and adaptation

Book of Susanna
1 Maccabees 2
Jubilees 1-3, 6, 32
Himmelfarb, “*Jubilees’* Kingdom of Priests”
Schiffman, “The Deuteronomic Paraphrase of the *Temple Scroll*”

Class 5 (Jan. 23) – Second Temple Judaism: The challenges of law

Reinhartz, “The Meaning of *nomos* in Philo’s *Exposition of the Law*”
Najman, “A Written Copy of the Law of Nature: An Unthinkable Paradox?”
Doering, “Jesus’ Sabbath Healings and Their Halakhic Implications Revisited”
Wyschogrod, “Paul, Jews, and Gentiles”

Class 6 (Jan. 25) – The Mishnah: Civil law

Daube, “The Civil Law of the Mishnah”

Lapin, “Economic and Social Relationships”

Dohrmann, “Can ‘Law’ Be Private? The Mixed Message of Rabbinic Oral Law”

Class 7 (Jan. 30) – The Mishnah: Religious law

Hauptman, “A New Interpretation of the Thirty-Nine Forbidden Sabbath Labors”

Fonrobert, “Neighborhood as Ritual Space: The Case of the Rabbinic *Eruv*”

Noam, “The Dual Strategy of Rabbinic Purity Legislation”

Class 8 (Feb. 1) – The Talmud: Civil law

Jacobs, Selections of Talmudic Law

Novick, “Agricultural Halakhah and Agricultural Science in Rabbinic Palestine”

Friedell, “Some Observations on the Talmudic Law of Torts”

Class 9 (Feb. 6) – The Talmud: Religious law

Selections: Sabbath law, Idolatry

Moscovitz, “We May Not Infer Civil Law from Ritual Law”

Hayes, “Amoraic Interpretation and Halakhic Development: The Case of the Prohibited Basilica”

Class 10 (Feb. 8) – Medieval codification: Maimonides

Mishneh Torah, Selections

Halbertal, “What Is *Mishneh Torah*?”

Cohen, “The Law of Power of Attorney in Maimonides’ Code of Jewish Law”

Class 11 (Feb. 13) – Medieval codification: Shulhan Arukh

Shulhan Arukh, Selections

Twersky, “The Shulhan ‘Aruk: Enduring Code of Jewish Law”

Wolf, “The Body in Shulhan Arukh”

Dow, “Opposition to the ‘Shulhan Aruch’: Articulating a Common Law Conception of Halacha”

Class 12 (Feb. 15) – Responsa literature

Roth, “Regional Boundaries and Medieval Halakhah”

Novak, “Modern Responsa, 1800 to the Present”

Pitkowsky, “Women Asking Rabbis Questions, from Rabbi Moshe Feinstein to the Internet”

Class 13 (Feb. 20) – Reform Judaism

Ellenson, “A Disputed Precedent”

Jacob, “Halakhah and Antinomism in Reform Judaism”

Cohn-Sherbok, “Law and Freedom in Reform Judaism”

Class 14 (Feb. 22) – Conservative Judaism

Batnitzky, “Religion as History: Religious Reform and the Invention of Modern Orthodoxy”
Dorff, “Jacob Agus”
Magid, “Apologetic Thinking and the Orthodox/Conservative Debate”

Class 15 (Feb. 27) – Zionism and Secularism

Silberstein, “Judaism as a Secular System of Meaning”
Gordon, “Yom Kippur” + Katzenelson, “Revolution and Tradition”
Ravitzky, “Competing Orthodox Conceptions of the Secular Jews”

Class 16 (March 1) – Israel: The role of Jewish Law in a secular state

Edrei, “Judaism, Jewish Law, and the Jewish State in Israel”
Elon, “The Value of a Jewish and Democratic State”
Barak, “The Value of the State of Israel as a Jewish and Democratic State”

Class 17 (March 6) – Israel: Religious courts and laws in a liberal democracy

Hacker, “Religious Tribunals in Democratic States”
Radzyner, “The Halakhic Status of the Official Rabbinical Courts in Israel”
Ben-Porat, “Live and Let Buy: Bargaining for the Sabbath”

Class 18 (March 8) – United States: Religious law and American public life

Buck, “Jewish Myths and Visions of America”
Kaplan, “Democracy and Jewish Law”
Soloveichik, “A Nation under God: Jews, Christians, and the American Public Square”
Kwall, “Homosexuality”

Class 19 (March 13) – United States: State law and Jewish life

Sarna, “Church-State Dilemmas of American Jews”
Greenawalt, “Using Secular Law to Assure Observance of Practices with Religious Significance”
Stolzenberg, “Challenging the Sovereign Shtetl”
Stone, “The Intervention of American Law in Jewish Divorce”

Class 20 (March 15) – Conclusion: Jewish Law and contemporary life and thought

Cohn, “Rights and Duties”
Levenson, “Judaism and Criminal Justice”
Levine, “Reflections on the Practice of Law as a Religious Calling”

Reserves

(These titles are recommended resources for papers. We shall discuss these further in class.)

- Ben-Menahem, Hanina, Arye Edrei, and Neil S. Hecht, ed. *Windows onto Jewish Legal Culture. Fourteen Exploratory Essays*. London and New York: Routledge, 2011.
- Broyde, Michael J. *The Codification of Jewish Law and an Introduction to the Jurisprudence of the Mishna Berura*. Boston: Academic Studies Press, 2014.
- Cohen, Arnold. *An Introduction to Jewish Civil Law*. Jerusalem and New York: Feldheim, 1991.
- Dorff, Elliot N. and Jonathan K. Crane, eds. *The Oxford Handbook of Jewish Ethics and Morality*. Oxford and New York: Oxford University Press, 2016.
- Elon, Menachem. *Jewish Law. History, Sources, Principles*. Translated by Bernard Auerbach and Melvin J. Sykes. Philadelphia: Jewish Publication Society, 1992.
- Freehof, Solomon. *Reform Responsa and Recent Reform Responsa*. New York: Ktav, 1973.
- Ganzfried, Solomon. *Code of Jewish Law. Kitzur Schulchan Aruch*. Translated by Hyman E. Goldin. New York: Hebrew Publishing Company, 1927.
- Golding, Martin P., ed. *Jewish Law and Legal Theory*. New York: New York University Press, 1993.
- Goodman, Martin. *A History of Judaism*. Princeton: Princeton University Press, 2018.
- Hecht, N. S. et al, eds. *An Introduction to the History and Sources of Jewish Law*. Oxford: Clarendon, 1996.
- Jacobs, Louis. *Jewish Law*. West Orange, N.J.: Behrman, 1968.
- Nadell, Pamela S. and Marc Lee Raphael. *Conservative Judaism in America. A Biographical Dictionary and Sourcebook*. Westport, Conn.: Greenwood, 1988.
- Neusner, Jacob. *The Mishnah. A New Translation*. New Haven: Yale University Press, 1988.

Sources of Secondary Readings

- Barak, Aharon. "The Value of the State of Israel as a Jewish and Democratic State." *Jewish Law Association Studies* 21 (2011): 6-18.
- Batnitzky, Leora. *How Judaism Became a Religion. An Introduction to Modern Jewish Thought*. Princeton: Princeton University Press, 2011.
- Ben-Porat, Guy. *Between State and Synagogue. The Secularization of Contemporary Israel*. Cambridge: Cambridge University Press, 2013.
- Buck, Christopher. *Religious Myths and Visions of America. How Minority Faiths Redefined America's World Role*. Westport, Conn.: Praeger, 2009.
- Cohen, Mark. "The Law of Power of Attorney in Maimonides' Code of Jewish Law." In *From a Sacred Source. Genizah Studies in Honour of Professor Stefan C. Reif*, edited by Ben Outhwaite and Siam Bhayro, 81-98. Leiden: Brill, 2010.
- Cohn, Haim H. *Human Rights in Jewish Law*. New York: Ktav, 1984.
- Cohn-Sherbok, Dan. *Issues in Contemporary Judaism*. New York: St. Martin's Press, 1991.
- Daube, David. "The Civil Law of the Mishnah: The Arrangement of the Three Gates." *Tulane Law Review* 18.3 (1944): 351-407. Reprinted in *Collected Works of David Daube, Volume One: Talmudic Law*, edited by Calum M. Carmichael, 257-304. Berkeley: Robbins Collection, University of California, 1992.
- Doering, Lutz. "Much Ado about Nothing? Jesus' Sabbath Healings and Their Halakhic Implications Revisited." In *Judaistik und neutestamentliche Wissenschaft. Standorte - Grenzen - Beziehungen*, edited by Lutz Doering, Hans-Günther Waubke, and Florian Wilk, 217-41. Göttingen: Vandenhoeck & Ruprecht, 2008.
- Dohrmann, Natalie B. "Can 'Law' Be Private? The Mixed Message of Rabbinic Oral Law." In *Public and Private in Ancient Mediterranean Law and Religion*, edited by Clifford Ando and Jörg Rüpke, 187-216. Berlin: de Gruyter, 2015.
- Dorff, Elliot N. *The Unfolding Tradition. Philosophies of Jewish Law*. New York: Aviv, 2011.
- Dow, Leon Wiener. "Opposition to the 'Shulhan Aruch': Articulating a Common Law Conception of Halacha." *Hebraic Political Studies* 3.4 (2008): 352-76.
- Edrei, Arye. "Judaism, Jewish Law, and the Jewish State in Israel." In *The Cambridge Companion to Judaism and the Law*, edited by Christine Hayes, 337-64. New York: Cambridge University Press, 2017.
- Ellenson, David. *After Emancipation. Jewish Religious Responses to Modernity*. Cincinnati: Hebrew Union College Press, 2004.
- Elon, Menachem. "The Values of a Jewish and Democratic State: The Task of Reaching a Synthesis." *Human Rights Review* 3.2 (2002): 36-84.

- Fonrobert, Charlotte Elisheva. "Neighborhood as Ritual Space: The Case of the Rabbinic *Eruv*." *Archiv für Religionsgeschichte* 10 (2008): 239-58.
- Friedell, Steven F. "Some Observations on the Talmudic Law of Torts." *Rutgers Law Journal* 15.4 (1984): 897-925.
- Ginzberg, Louis. *On Jewish Law and Lore*. Philadelphia: Jewish Publication Society, 1955.
- Gordon, Aaron David. "Yom Kippur." In *The Zionist Idea. A Historical Analysis and Reader*, edited by Arthur Hertzberg, 383-4. New York: Atheneum, 1973.
- Greenawalt, Kent. "Religious Law and Civil Law: Using Secular Law to Assure Observance of Practices with Religious Significance." *Southern California Law Review* 71 (1998): 781-843.
- Hacker, Daphna. "Religious Tribunals in Democratic States: Lessons from the Israeli Rabbinical Courts." *Journal of Law and Religion* 27.1 (2012): 59-81.
- Halbertal, Moshe. *Maimonides. Life and Thought*. Translated by Joel Linsider. Princeton: Princeton University Press, 2014.
- Hallo, William W., ed. *The Context of Scripture. Volume II: Monumental Inscriptions from the Biblical World*. Leiden: Brill, 2000.
- Hauptman, Judith. "A New Interpretation of the Thirty-Nine Forbidden Sabbath Labors." In *The Faces of Torah. Studies in the Texts and Contexts of Ancient Judaism in Honor of Steven Fraade*, edited by Michal Bar-Asher Siegal, Tzvi Novick, and Christine Hayes, 323-37. Göttingen: Vandenhoeck & Ruprecht, 2017.
- Hayes, C. E. "Amoraic Interpretation and Halakhic Development: The Case of the Prohibited Basilica." *Journal for the Study of Judaism* 26.2 (1995): 156-68.
- Himmelfarb, Martha. *A Kingdom of Priests. Ancestry and Merit in Ancient Judaism*. Philadelphia: University of Pennsylvania Press, 2006.
- Jackson, Bernard S., B. Lifshitz, A. Gray, and Daniel B. Sinclair. "Halacha and Law." In *The Oxford Handbook of Jewish Studies*, edited by Martin Goodman, Jeremy Cohen and David Sorkin, 643-79. Oxford: Oxford University Press, 2002.
- Jacob, Walter. "'The Law of the Lord Is Perfect': Halakhah and Antinomism in Reform Judaism." *CCAR Journal* 51.3 (2004): 72-84.
- Jacobs, Louis. *Jewish Law*. West Orange, N.J.: Behrman, 1968.
- Kaplan, Mordechai M. *Dynamic Judaism. The Essential Writings of Mordecai M. Kaplan*, edited by Emanuel S. Goldsmith and Mel Scult. New York: Schocken Books for the Reconstructionist Press, 1985.
- Katzenelson, Berl. "Revolution and Tradition." In *The Zionist Idea. A Historical Analysis and Reader*, edited by Arthur Hertzberg, 390-5. New York: Atheneum, 1973.
- Kirschenbaum, Aaron. *Equity in Jewish Law. Halakhic Perspectives in Law. Formalism and Flexibility in Jewish Civil Law*. Hoboken, N.J.: Ktav and New York: Yeshiva University Press, 1991.
- Kwall, Roberta Rosenthal. *The Myth of the Cultural Jew. Culture and Law in Jewish Tradition*. Oxford: Oxford University Press, 2015.
- Lapin, Hayim. *Early Rabbinic Civil Law and the Social History of Roman Galilee. A Study of Mishnah Tractate Baba' Meš'ā'*. Atlanta: Scholars Press, 1995.
- Levenson, Laurie L. "Judaism and Criminal Justice." In *The Oxford Handbook of Jewish Ethics and Morality*, edited by Elliot N. Dorff and Jonathan K. Crane, 472-86. New York: Oxford University Press, 2013.
- Levine, Samuel J. "Reflections on the Practice of Law as a Religious Calling, from a Perspective of Jewish Law and Ethics." *Pepperdine Law Review* 32.2 (2005): 411-8.
- Levinson, Bernard M. "The Birth of the Lemma: The Restrictive Reinterpretation of the Covenant Code's Manumission Law by the Holiness Code (Leviticus 25:44-46)." *Journal of Biblical Literature* 124.4 (2005): 617-39.
- Magid, Shaul. "Walking Softly on/with the Law: Apologetic Thinking and the Orthodox/Conservative Debate." *Conservative Judaism* 54.1 (2002): 29-52.
- Moscovitz, Leib. "'We May Not Infer Civil Law from Ritual Law': Some Observations on the Internal Unity of Rabbinic Law." *Jewish Law Association Studies* 22 (2012): 193-227.
- Najman, Hindy. "A Written Copy of the Law of Nature: An Unthinkable Paradox?" *Studia Philonica Annual* 15 (2003): 54-63.
- Noam, Vered. "The Dual Strategy of Rabbinic Purity Legislation." *Journal for the Study of Judaism* 39.4-5 (2008): 471-512.
- Novak, David. "Modern Responsa: 1800 to the Present." In *An Introduction to the History and Sources of Jewish Law*, edited by N. S. Hecht et al., 379-95. Oxford: Clarendon, 1996.
- Novick, Tzvi. "'Like an Expert Sharecropper': Agricultural Halakhah and Agricultural Science in Rabbinic Palestine." *AJS Review* 38.2 (2014): 303-20.
- Pitkowsky, Michael. "'Dear Rabbi, I am a Woman Who...': Women Asking Rabbis Questions, from Rabbi Moshe Feinstein to the Internet." *Nashim* 21 (2011): 134-59.

- Radzyner, Amihai. "The Impact of Supreme Court Rulings on the Halakhic Status of the Official Rabbinical Courts in Israel." In *Institutionalizing Rights and Religion. Competing Supremacies*, edited by Leora Batnitzky and Hanoch Dagan, 224-240. Cambridge: Cambridge University Press, 2017.
- Ravitzky, Aviezer. "Covenant of Faith or Covenant of Fate? Competing Orthodox Conceptions of the Secular Jews." In *Creation and Re-Creation in Jewish Thought. Festschrift in Honor of Joseph Dan*, edited by Rachel Elior and Peter Schäfer, 271-307. Tübingen: Mohr Siebeck, 2005.
- Reinhartz, Adele. "The Meaning of *nomos* in Philo's *Exposition of the Law*." *Studies in Religion* 15.3 (1986): 337-45.
- Roth, Pinchas. "Regional Boundaries and Medieval Halakhah: Rabbinic Responsa from Catalonia to Southern France in the Thirteenth and Fourteenth Centuries." *Jewish Quarterly Review* 105.1 (2015): 72-98.
- Sarna, Jonathan D. "Church-State Dilemmas of American Jews." In *Jews and the American Public Square. Debating Religion and Republic*, edited by Alan Mittleman, Robert Licht, and Jonathan D. Sarna, 47-68. Lanham, Md.: Rowman & Littlefield, 2002.
- Schiffman, Lawrence H. "The Deuteronomic Paraphrase of the *Temple Scroll*." *Revue de Qumran* 15.4 (1992): 543-67.
- Schwartz, Baruch Jacob. "'Profane' Slaughter and the Integrity of the Priestly Code." *Hebrew Union College Annual* 67 (1996): 15-42.
- Silberstein, Laurence J. "Judaism as a Secular System of Meaning: The Writings of Ahad Haam." *Journal of the American Academy of Religion* 52.3 (1984): 547-68.
- Soloveichik, Meir. "A Nation under God: Jews, Christians, and the American Public Square." *Torah U-Madda* 14 (2006-2007): 62-83.
- Stolzenberg, Nomi Maya. "Challenging the Sovereign Shtetl: Communitarianism from the Bottom Up, Redux." *Jewish Studies Quarterly* 23.3 (2016): 247-66.
- Stone, Suzanne Last. "The Intervention of American Law in Jewish Divorce: A Pluralist Analysis." *Israel Law Review* 34.2 (2000): 170-210.
- Twersky, Isadore. "The Shulhan 'Aruk: Enduring Code of Jewish Law." *Judaism* 16.2 (1967): 141-58.
- Wells, Bruce. "What Is Biblical Law? A Look at Pentateuchal Rules and Near Eastern Practice." *Catholic Biblical Quarterly* 70.2 (2008): 223-43.
- Woolf, Jeffrey R. "'La'avodat Bor'o': The Body in Shulhan Arukh of R. Joseph Caro." In *The Jewish Body. Corporeality, Society, and Identity in the Renaissance and Early Modern Period*, edited by Maria Diemling and Giuseppe Veltri, 157-78. Leiden: Brill, 2008.
- Wyschogrod, Michael. *Abraham's Promise. Judaism and Jewish-Christian Relations*. Grand Rapids, Mich.: Eerdmans, 2004.