

## An Introduction to Jewish Law

A paper delivered at the first international conference on comparative law (Paris, 1900) contained the following statement: “Everyone, it would seem, is familiar with the Jewish people’s laws; however, if you were to ask someone about this or that point, you would discover that this person knows very little, in fact, almost nothing.”<sup>1</sup>

More than a century later, the situation has remained pretty much the same. Law students generally complete their program of studies without encountering any aspect of Jewish law, unless they happen to come across the well-known subject of the *get* (Jewish divorce document) or they have to tackle a thorny question involving private international law (conflict of laws). The average educated person usually knows nothing about Jewish law or has only a confused picture distorted by 2,000 years of Christian polemics.

Those who wish to obtain an introduction to Jewish law will discover that works on comparative law are usually silent on this subject and will be unable to find any manuals on Jewish law comparable to those that exist on the laws of other religions, such as canonical or Muslim law.

Why is there such an absence of information? Authors usually do not explain why they exclude an examination of the background of Jewish law. René David, whose groundbreaking work *Les grands systèmes de droit contemporain* has left a lasting imprint on comparativist scholarship, is more eloquent, although one is forced to admit that his words are rather perplexing. According to David, there are three principal families of law: (1) Romano-Germanic – roughly speaking, continental Europe and those countries that

<sup>1</sup> M. Rapaport, “L’esprit du Talmud et son influence sur le droit judaïque,” in *Congrès international de droit comparé, tenu à Paris du 31 juillet au 4 août 1900, Procès-verbaux des séances et documents*, Tome 1, L.G.D.J., 1905, p. 310.

have adopted the French civil code or the German civil code (Bürgerliches Gesetzbuch [BGB]); (2) common law – England, the United States and those countries that have received this model; (3) the “residual family” or “other concepts of law and social order.” The term “other” actually means “non-Western.” This family is thus – and unfortunately – defined in negative terms. The definition is particularly unfortunate because David divides this residual family into two totally opposite groups: “Sometimes immense value is attached to law, which, however, is conceived differently than in the West; sometimes, in sharp contrast, the very notion of law itself is rejected and thus social relationships are regulated outside the parameters of law. The first approach is prevalent in Muslim, Hindu and Jewish law, while the second exists in the Far East, Africa and Madagascar.” Muslim, Hindu and Jewish law, explains David, are intimately linked to the respective religions. However, readers will not find any further discussion of Jewish law. David clarifies the reason for this exclusion: “Although it is a fascinating subject, Jewish law has not been included in the discussion because its influence is extremely limited.” Is he speaking in quantitative terms? Apparently, he is. After all, the 17 million Jews throughout the world constitute a very small global presence; however, the degree of interest in a legal system does not hinge on the number of persons governed by it. If it did, how can one explain the interest shown in the laws of the Principality of Monaco or the Grand Duchy of Luxembourg? The second justification for the exclusion of Jewish law is more mystifying: “The international solidarity existing among Jews, so long as it exists, has never been expressed by a desire to prioritize Hebrew religious law over the laws in effect in the different countries where it could have an influence. Thus, Jewish law has never had the same importance as, for example, Muslim law.” Indeed, no Jewish community has ever aspired to assign precedence to its law over the laws of the nation under whose sun it resides. Such a hegemonic ambition has never been congruent with the spirit of Jewish law, which applies to Jews, who have no goal to impose their legal system on other nations but who, quite the contrary, recognize to a great extent the superiority of the laws of those nations (see Chapter 6). Is the desire for legal imperialism a prerequisite for inclusion among the major legal systems in the world today?

At this stage, it is perhaps necessary to show why people should be interested in reading this book. Very simply, note that the Jewish legal system is the oldest legal system still in effect today, that it has left its imprint on numerous legal institutions and that it has influenced authors such as Hugo Grotius (1583–1645) and Hans Kelsen (1881–1973), to cite but two examples. One could also add that the study of Jewish law contributes to a better understanding of legal pluralism because it is a personal legal system that is able to coexist with the legal systems

of other nations. Furthermore, Jewish law has several remarkable features: (1) it is religious, non-state law (see Chapter 2); (2) it is dispensed by courts of law that have no coercive authority, which, in any case, can never be manifested because the absence of a state implies the absence of enforcement power; (3) generally speaking, although it lacks any central authority that could guarantee its unity, it manages to function effectively.

In accordance with the editorial nature of a collection, the present work is an essay and not a manual that could provide an overview of the entire context of Jewish law. Emphasis has been placed on the origins, sources and structure of Jewish law. The reader may be guided further by a multilingual selected bibliography.

## Further Reading

### BIBLICAL LAW

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### THE INFLUENCE OF JEWISH LAW ON OTHER LEGAL SYSTEMS

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### BASIC BOOKS ON JEWISH LAW

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 Hayes, C. (ed.). *The Cambridge Companion to Judaism and Law*, Cambridge University Press, 2017.  
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### COLLECTIONS OF FUNDAMENTAL ARTICLES ON JEWISH LAW

- Batnitzky, L. and Brafman, Y. (eds.). *Jewish Legal Theories: Writings on State, Religion and Morality*, Brandeis University Press, 2018.  
 Ben-Menahem, H. and Hecht, N. S. (eds.). *Authority, Process and Method: Studies in Jewish Law*, Harwood Academic Publishers, 1998.  
 Drey, A. and Hecht, N. S. (eds.). *Windows onto Jewish Legal Culture: Fourteen Exploratory Essays*. 2 volumes. Routledge, 2011.

### TEXTBOOKS AND CASEBOOKS

- Elon, M., Auerbach, B., Chazin, D. D., and Sykes, M. J. *Jewish Law (Mishpat Ivri): Cases and Materials*, LexisNexis, 1999.  
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## SPECIALIZED LAW JOURNALS AND YEARBOOKS

- Dinei Israel: Studies in Halakhah and Jewish Law* (Faculty of Law, Tel-Aviv University and Benjamin N. Cardozo School of Law, Yeshiva University) [www.cardozo.yu.edu/programs-centers/yeshiva-university-center-jewish-law-and-contemporary-civilization/publications-o](http://www.cardozo.yu.edu/programs-centers/yeshiva-university-center-jewish-law-and-contemporary-civilization/publications-o))
- Hakira: The Flatbush Journal of Jewish Law and Thought* ([www.Hakira.org](http://www.Hakira.org))
- Jewish Law Annual* (Routledge)
- Jewish Law Association Studies* ([www.legaltheory.demon.co.uk/jlas/publications.htm](http://www.legaltheory.demon.co.uk/jlas/publications.htm))
- Journal of Halachah and Contemporary Society* ([www.daat.ac.il/daat/english/Journal/index.html](http://www.daat.ac.il/daat/english/Journal/index.html))
- Oqimta: Studies in Talmudic and Rabbinic Literature* ([www.oqimta.org.il/english/HomePage.aspx](http://www.oqimta.org.il/english/HomePage.aspx))
- Shenaton Hamishpat Ha'ivri* (Hebrew University of Jerusalem)
- Tsafon: Revue d'études juives du Nord* (Université de Lille III) ([www.tsafon-revue.com/](http://www.tsafon-revue.com/))
- Yod: Revue des études hébraïques et juives* (INALCO) (<http://yod.revues.org/>)