

THE CAMBRIDGE COMPANION TO JUDAISM AND LAW

The Cambridge Companion to Judaism and Law explores the Jewish conception of law as an essential component of the divine–human relationship from biblical to modern times, as well as resistance to this conception. It also traces the political, social, intellectual, and cultural circumstances that spawned competing Jewish approaches to its own "divine" law and the "non-divine" law of others, including that of the modern secular state of Israel.

Written by an international team of distinguished scholars, the volume's fourteen chapters examine common themes outlined in the Introduction. Part I focuses on the emergence and development of law as an essential element of religious expression in biblical Israel and classical Judaism through the medieval period. Part II considers the ramifications for the law arising from political emancipation and the invention of Judaism as a "religion" in the modern period. Part III traces the historical and ideological processes leading to the current configuration of religion and state in modern Israel, and analyzes specific conflicts between religious law and state law.

Christine Hayes is the Weis Professor of Religious Studies in Classical Judaica at Yale University. A specialist in talmudic-midrashic studies, her published works include Between the Babylonian and Palestinian Talmuds (1997, winner of a Salo Baron prize), Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud (2002, National Jewish Book Award finalist), The Emergence of Judaism (2010), Introduction to the Bible (2012), and What's Divine about Divine Law? Early Perspectives (2015 National Jewish Book Award in Scholarship; 2016 PROSE award in Theology and Religious Studies from the American Publishers Association). She is an elected member of the American Academy of Jewish Research and Vice President for Program of the Association for Jewish Studies.



CAMBRIDGE COMPANIONS TO RELIGION

This is a series of companions to major topics and key figures in theology and religious studies. Each volume contains specially commissioned chapters by international scholars, which provide an accessible and stimulating introduction to the subject for new readers and nonspecialists.

OTHER TITLES IN THE SERIES

AMERICAN ISLAM Edited by Juliane Hammer and Omid Safi

AMERICAN JUDAISM Edited by Dana Evan Kaplan

AMERICAN METHODISM Edited by Jason E. Vickers

ANCIENT MEDITERRANEAN RELIGIONS Edited by Barbette Stanley Spaeth

KARL BARTH Edited by John Webster

THE BIBLE, 2nd edition Edited by Bruce Chilton

BIBLICAL INTERPRETATION Edited by John Barton

DIETRICH BONHOEFFER Edited by John de Gruchy

JOHN CALVIN Edited by Donald K. McKim

CHRISTIAN DOCTRINE Edited by Colin Gunton

CHRISTIAN ETHICS Edited by Robin Gill

CHRISTIAN MYSTICISM Edited by Amy Hollywood and Patricia Z. Beckman

CHRISTIAN PHILOSOPHICAL THEOLOGY Edited by Charles Taliaferro and Chad V. Meister

CLASSICAL ISLAMIC THEOLOGY Edited by Tim Winter

JONATHAN EDWARDS Edited by Stephen J. Stein

FEMINIST THEOLOGY Edited by Susan Frank Parsons

THE JESUITS Edited by Thomas Worcester

JESUS Edited by Markus Bockmuehl

C. S. LEWIS Edited by Robert MacSwain and Michael Ward

LIBERATION THEOLOGY Edited by Chris Rowland

MARTIN LUTHER Edited by Donald K. McKim

MEDIEVAL JEWISH PHILOSOPHY Edited by Daniel H. Frank and Oliver Leaman

MODERN JEWISH PHILOSOPHY Edited by Michael L. Morgan and Peter Eli Gordon

MOHAMMED Edited by Jonathan E. Brockup

PENTECOSTALISM Edited by Cecil M. Robeck, Jr. and Amos Yong

POLITICAL THEOLOGY Edited by Craig Hovey and Elizabeth Phillips

POSTMODERN THEOLOGY Edited by Kevin J. Vanhoozer

(continued after the Index)



The Cambridge Companion to Judaism and Law

Edited by
CHRISTINE HAYES





CAMBRIDGEUNIVERSITY PRESS

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781107036154

© Cambridge University Press 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

Printed in the United States of America by Sheridan Books, Inc.

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data Hayes, Christine Elizabeth, editor.

Cambridge companion to Judaism and law / edited by Christine Hayes. New York, NY, USA: Cambridge University Press, 2017. | Series: Cambridge companions to religion | Includes bibliographical references and index.

LCCN 2016028972 | ISBN 9781107036154 (hardback) pat Ivri | Jewish law - History | Law - Israel - Jewish influence

LCSH: Mishpat Ivri. | Jewish law – History. | Law – Israel – Jewish influences. | Judaism – Doctrines. | BISAC: RELIGION / Judaism / General.

LCC KBM524 .C36 2016 | DDC 340.5/8-dc23 LC record available at https://lccn.loc.gov/2016028972

> ısвn 978-1-107-03615-4 Hardback ısвn 978-1-107-64494-6 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



Contents

List	of Contributors	page 1x
Ackı	nowledgments	xi
	Introduction: Can We Even Speak of "Judaism and Law"? Christine Hayes	1
	PART I LAW AS CONSTITUTIVE OF BIBLICAL AND PREMODERN JEWISH RELIGIOUS EXPRESSION	
1	Law in Biblical Israel Chaya Halberstam	19
2	Law in Jewish Society in the Second Temple Period Seth Schwartz	48
3	Law in Classical Rabbinic Judaism Christine Hayes	76
4	Approaches to Foreign Law in Biblical Israel and Classical Judaist through the Medieval Period Beth Berkowitz	n 128
5	Law in Medieval Judaism Warren Zev Harvey	157
	PART II ENLIGHTENMENT, EMANCIPATION, AND THE INVENTION OF JEWISH "RELIGION"	
6	From Enlightenment to Emancipation Verena Kasper-Marienberg	189
7	Enlightenment Conceptions of Judaism and Law Eliyahu Stern	215

vii



viii CONTENTS

8	Rethinking <i>Halakhah</i> in Modern Eastern Europe: Mysticism, Antinomianism, Positivism Menachem Lorberbaum	232
9	Antinomianism and Its Responses in the Nineteenth Century David Ellenson	260
10	New Developments in Modern Jewish Thought: From Theology to Law and Back Again Yonatan Y. Brafman	287
	PART III JUDAISM AND THE SECULAR JEWISH STATE	
11	Judaism and Jewish Law in Pre-State Palestine Amihai Radzyner	317
12	Judaism, Jewish Law, and the Jewish State in Israel Arye Edrei	337
13	What Does It Mean for a State to Be Jewish? Daphne Barak-Erez	365
14	Fault Lines Patricia J. Woods	386
Ind	lex	421



Contributors

DAPHNE BARAK-EREZ is a Justice of the Supreme Court of Israel. Formerly the Stewart and Judy Colton Professor of Law and Dean of the Faculty of Law at Tel Aviv University, she is the author of *Outlawed Pigs: Law, Religion and Culture in Israel* (2007).

BETH BERKOWITZ is Ingeborg Rennert Chair of Jewish Studies in the Department of Religion at Barnard College and author of *Defining Jewish Difference: From Antiquity to the Present* (Cambridge University Press, 2014).

YONATAN Y. BRAFMAN is Assistant Professor of Jewish Thought and Ethics and the director of the Program in Jewish Ethics at the Jewish Theological Seminary of America. He is currently working on a book project entitled *Critique of Halakhic Reason: From Divine Norms to Social Normativity*.

ARYE EDREI is Professor of Law at Tel Aviv University. He is co-editor in chief of the journal *Dine Israel* and co-author of *Zweierlei Diaspora: Zur Splatung der antiken Judischen Welt* (2009).

DAVID ELLENSON is Director of the Schusterman Center for Israel Studies at Brandeis University. The former president and I. H. and Anna Grancell Professor of Jewish Religious Thought at the Hebrew Union College – Jewish Institute of Religion, he is author of *Jewish Meaning in a World of Choice: Studies in Tradition and Modernity* (2014).

CHAYA HALBERSTAM is Associate Professor of Judaism at King's University College, Western University, in London, Ontario, and author of *Law and Truth in Biblical and Rabbinic Literature* (2010).



LIST OF CONTRIBUTORS

X

WARREN ZEV HARVEY is Professor Emeritus of the Department of Jewish Thought at the Hebrew University of Jerusalem, Israel, and author of *Physics and Metaphysics in Hasdai Crescas* (1998).

CHRISTINE HAYES is the Robert F. and Patricia R. Weis Professor of Religious Studies in Classical Judaica at Yale University and author of *What's Divine about Divine Law? Early Perspectives* (2015).

VERENA KASPER-MARIENBERG is Assistant Professor of History at North Carolina State University and author of "Vor Euer Kayserlichen Mayestät Justiz-Thron." Die Frankfurter jüdische Gemeinde am Reichshofrat in josephinischer Zeit (1765–90) (2012).

MENACHEM LORBERBAUM is Professor of Jewish Philosophy at Tel Aviv University and heads the Bet Midrash of the Shalom Hartman Institute, Jerusalem. He is co-editor of *The Jewish Political Tradition* (2003) and author of *Dazzled by Beauty: Theology as Poetics in Hispanic Jewish Culture* (2011).

AMIHAI RADZYNER is Professor of Jewish Law in the Faculty of Law, Bar-Ilan University. He is the chief editor of *Ha-Din ve-ha-Dayan* (The Law and Its Decisor), a journal of Israeli rabbinical court decisions on family matters.

SETH SCHWARTZ is the Lucius N. Littauer Professor of Classical Jewish Civilization at Columbia University and author of *The Ancient Jews from Alexander to Muhammad* (Cambridge University Press, 2014).

ELIYAHU STERN is Associate Professor of Modern Jewish Intellectual and Cultural History at Yale University and author of *The Genius: Elijah of Vilna and the Making of Modern Judaism* (2013).

PATRICIA J. WOODS is Associate Professor in the Department of Political Science and in the Center for Jewish Studies at the University of Florida. She is the author of *Judicial Power and National Politics: Courts and Gender in the Religious-Secular Conflict in Israel* (2008; second edition forthcoming).



Acknowledgments

In crafting the original plan for this volume, I envisaged a series of chapters ranging from biblical antiquity to the modern state of Israel, united by a common exploration of the concept of law as a vehicle for the divine-human relationship in Judaism, and of challenges to that concept arising from within Judaism and from various political and socio-historical realities. Hoping for a sustained and thorough-going narrative incorporating conceptual and historical approaches, I charted the precise terrain to be convered in each chapter. To my delight, it was not difficult to identify contributors who shared my enthusiasm for the project, and I couldn't be more pleased with the result: a stunning, collaborative effort by eminent scholars working with common purpose across a spectrum of disciplines, areas of specialty, and time periods to produce a cohesive and tightly interconnected volume that is greater than the sum of its parts.

I owe special thanks to the patient team at Cambridge University Press who allowed this project to take as long as it needed to take. I benefited from the kind attention and able assistance of a succession of editors and editorial assistants including Laura Morris, Beatrice Rehl, Alexandra Poreda and Isabella Vitti. I was fortunate to have the gloriously detail-oriented Jacqueline French as copy-editor. The logistics of publication were handled by Christina Sarigiannidou and Hannah Hiscock, with Ross Stewart carrying the project over the finish line.

It is wonderfully fitting that this volume on *Judaism and Law* reached completion on the eve of Simhat Torah – a holiday dedicated to joyful celebration in the Torah.

Christine Hayes October 23, 2016