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
Contents

List of Contributors \hspace{1cm} page ix
Acknowledgments \hspace{1cm} xi

Introduction: Can We Even Speak of “Judaism and Law”? \hspace{1cm} 1
Christine Hayes

Part I Law as Constitutive of Biblical and Premodern Jewish Religious Expression

1 Law in Biblical Israel \hspace{1cm} 19
Chaya Halberstam
2 Law in Jewish Society in the Second Temple Period \hspace{1cm} 48
Seth Schwartz
3 Law in Classical Rabbinic Judaism \hspace{1cm} 76
Christine Hayes
4 Approaches to Foreign Law in Biblical Israel and Classical Judaism through the Medieval Period \hspace{1cm} 128
Beth Berkowitz
5 Law in Medieval Judaism \hspace{1cm} 157
Warren Zev Harvey

Part II Enlightenment, Emancipation, and the Invention of Jewish “Religion”

6 From Enlightenment to Emancipation \hspace{1cm} 189
Verena Kasper-Marienberg
7 Enlightenment Conceptions of Judaism and Law \hspace{1cm} 215
Eliyahu Stern
CONTENTS

8 Rethinking *Halakhah* in Modern Eastern Europe: Mysticism, Antinomianism, Positivism 232
   Menachem Lorberbaum

9 Antinomianism and Its Responses in the Nineteenth Century 260
   David Ellenson

10 New Developments in Modern Jewish Thought: From Theology to Law and Back Again 287
   Yonatan Y. Brafman

PART III JUDAISM AND THE SECULAR JEWISH STATE

11 Judaism and Jewish Law in Pre-State Palestine 317
   Amihai Radzyner

12 Judaism, Jewish Law, and the Jewish State in Israel 337
   Arye Edrei

13 What Does It Mean for a State to Be Jewish? 365
   Daphne Barak-Erez

14 Fault Lines 386
   Patricia J. Woods

Index 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

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).


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 covered 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

xi