

Comparison of American and Talmudic Law

JUDS 4932H/ POLI 2198H

Professor Adina Levine

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PURPOSE AND SCOPE:

This comparative course is designed to:

1. Introduce students to the concepts, methods and contemporary issues in Comparative Law.
2. Comparatively analyze the origins, processes, structures and codes in the American and Judaic legal systems and traditions.
3. Focus on specific substantive differences between American and Talmudic law, and the ethical and practical considerations underlying them.

The current trend toward globalization has renewed interest in comparative law. The era of legal isolationism is coming to an end, and there has been an increased focus on the similarities between legal systems in forging global discourse across jurisdictions. By comparing the structure of the Jewish legal system with the American one, students will come to understand the foundational concerns that go into creating any legal system, and to better analyze – on an ideological plane – what the law should be.

We will begin the semester by looking at the foundational concerns with any legal system: what is the goal of a legal system and what should it be, and how courts should be structured as the way to achieve those goals. There will be several guest lectures who will discuss different aspects of comparative law, in terms of the difference between constitutional theory and Jewish legal theory and how the Jewish legal system tries to accommodate the American legal system. The focus of the independent assignments will be on substantive issues – including abortion and the death penalty - and analyze the difference between the American legal approach and the halachic approach. The focus of the independent readings will be on primary sources including several cases and Talmudic excerpts. Through understanding the differences between the American and Jewish legal systems, students will develop a critical understanding – and concomitantly, an appreciation – for the nuances of the law as well as the legal structure as a whole.

REQUIREMENTS:

Students are expected to complete the assigned readings for each class and be prepared to engage in discussion about them. As this is an Honors Course, a robust discussion about the issues presented is an important part of the class. Therefore, class participation will constitute 15% of the student's grade. A student is allowed to miss no more than two classes. Lateness counts as half an absence.

There will be two small written assignments (5-6 pages in length) and one longer research paper (10-15 pages in length) during the semester to allow students to better explore additional aspects

of comparative law in depth. The first two assignments will be based on primary sources provided by the Professor, including Talmudic excerpts and Judaic responsa, and Supreme Court cases. Students will be expected to compare the primary sources of both Talmudic law and American law and develop a coherent thesis that relate to the broader themes of comparative law discussed in class. The third assignment will be due the last class of the semester and will be based on a topic of the student's own choosing, and should be no more than 15 pages in length with annotated sources. Students will also be required to discuss their papers during classroom discussion.

The student's grade will be calculated as follows:

- 15% class participation
- 20% first paper and oral presentation on first paper
- 30% second paper and oral presentation on second paper
- 35% third paper and oral presentation on third paper

SYLLABUS:

1. January 27, 2020: Introduction and Divine Influence on Talmudic Law

How does the fact that Jewish law is divine influence substantive and procedural law? Is it appropriate to compare Jewish and American law if Jewish law is divine? What type of unique considerations exist in the American legal system that do not exist in the Talmudic system?

2. February 3, 2020: Criminal v. Civil Law

What are the different goals of civil law and criminal law in both American and Talmudic legal systems? How does this difference play out in whether to criminalize attempt?

3. February 10, 2020: Structure of the Courts

What is the appropriate number of judges for civil cases? For capital cases? For the highest court of the land? What are the qualifications for judges and are laymen considered appropriate decisionmakers (the judge v. jury question)?

4. February 17, 2020: Guest Lecture

Rabbi Itamar Rosensweig, editor of *Jewishprudence* and dayan at the Beth Din of America, will lecture on the Role of the Advocate in Jewish Courts

5. February 24, 2020: Presentation and discussion of first paper: Abortion

First assignment is due and may either be submitted by email before class or handed in at the beginning of class.

6. March 2, 2020: Practical Comparison of American & Talmudic Law: A Dialogue Between Judge Joseph Greenaway, Jr., & Rabbi Yonah Reiss

Judge Greenaway and Rabbi Reiss will discuss their experiences in law, and how the American and Talmudic system approach questions differently in terms of the role of equity in law, advisability of an appeals process, innovation and law.

Note that this is an Honors event.

7. March 16, 2020: Guest Lecture

Michael Helfand, Professor of Law and Associate Dean for Faculty and Research at Pepperdine University Caruso School of Law as well as interim director of the Nootbaar Institute for Law, Religion and Ethics, will discuss Jewish institutions advocating for religious liberty.

8. March 23, 2020: Guest Lecture

Rabbi Shlomo Weissmann, Director of Beit Din of America, will discuss how Beit Din decisions interact with American law.

9. March 30, 2020: Presentation and discussion of second paper: Death Penalty

Second assignment is due and may either be submitted by email before class or handed in at the beginning of class.

10. April 20, 2020: Guest Lecture

Rabbi Itamar Rosensweig will lecture on New York's Get law.

11. April 27, 2020: Guest Lecture

Samuel J. Levine, Professor of Law, Director of the Jewish Law Institute at Touro Law School, will discuss "Jewish Legal theory and American Constitutional Theory: Some comparisons and contrasts."

12. May 4, 2020: Guest Lecture

Rabbi Itamar Rosensweig will lecture on Business Ethics and Supply and Demand.

13. May 11, 2020: Presentation of Final Papers

Last assignment is due and may either be submitted by email before class or handed in at the beginning of class.

Third Paper: Suggested Paper Topics

The following are a list of suggested paper topics comparing American Law and Jewish Law. These are general topics that should be more narrowly defined in your paper. You may also choose another topic in a similar vein. The paper must be annotated and may be 10-15 pages in length.

1. Exigent Circumstances in Jewish Law v. American Law: Et La'asot La'Hashem Hefiro Toratecha
2. Role of the Bat Kol in Jewish Law
3. Requirement for Heads of State: A comparison between the King and the President
4. Circumstantial Evidence in Jewish and American Law
5. Bankruptcy Law: Compare Jewish Law perspective of the propriety of discharging personal debts with the American system.
6. Causation in American Law v. Grama in Jewish Law
7. Contract Law: What is adequate consideration under Jewish Law v. American Law
8. Damages in American Law v. Jewish Law
9. Employment Law: What are unconscionable terms of employment in Jewish Law and American Law?
10. Artificial Insemination: A comparison of identity in Jewish and American Law
11. Intellectual Property Law: Do you own your idea in Jewish Law and American Law.
12. Inheritance law: Bequeathing assets to daughters in Jewish and American law.