

Comparison of American and Talmudic Law: Great Cases of Conflict

JUDS 4932H/ POLI 2198H

Professor Adina Levine

Adina.levine@gmail.com

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, what is the role of the central text (the Constitution or the Torah) and who has authority to interpret it, and whether there is room for pluralism within the American or Jewish legal systems. The second half of the semester will focus on substantive issues – including rules of evidence, the prohibition on self-incrimination and the right to die - 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. August 26, 2014: 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. September 2, 2014: 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. September 9, 2014: The procedure of appeals

Do American courts and Jewish courts differ in terms of appeals process? Should appeals be allowed?

4. Monday, September 15, 2014: Guest Lecture

A Comparative Discussion with Rabbi Reiss and Judge Joe Greenaway
Koch Auditorium, 6-7:30

5. September 30, 2014: 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)?

6. October 21, 2014: 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.

7. October 28, 2014: Legislating Ethics

Does Jewish Law Legislate Ethics? Does American Law Legislate Ethics? Should legal systems legislate ethics? Is there a way to justify the marriage debate other than on the basis of ethics.

8. November 3-7, 2014: Religious Freedom in America

Course available in the Tikvah Center in the heart of New York City (165 E. 56th Street) taught by Rabbi Meir Soloveichik of Yeshiva University and former federal judge Michael McConnell of Stanford Law School.

9. November 11, 2014: Authority of Interpretation

Who can interpret Jewish law? Who can interpret American law? Is interpreting the same thing as applying? What authority is given to the judges or rabbis to legislate? What role is there for the minority opinion in Jewish law and American law? Do rulings need to be unanimous or can there be disagreement?

10. November 18, 2014: Presentation and discussion of second paper: Right to Die

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

11. November 25, 2014: American Law in Beit Din Decisions

Guest Lecture: Rabbi Shlomo Weissmann, Menahel of Beit Din of America

12. December 9, 2014: Self Defense

From George Zimmerman's acquittal in Florida in the shooting death of Trayvon Martin to the acquittal of Ezekiel Gilbert in Texas in the shooting death of an escort he claimed stole \$150 from him, the use of deadly force in defense of self and property has become a topic of popular debate. In this class we will examine both the actual state of the law in varying jurisdictions as well as its historical development and the theoretical justifications for differing approaches. We will then turn to the biblical case of a nighttime thief who tunnels into a home ["ba ba-mahteret"], which on its surface seems to bear many similarities to the castle doctrine. By studying that case's elucidation in the Talmudic legal system, however, we will complicate the picture and be able to further probe the theoretical and ethical justifications for using deadly force.

13. December 16, 2014: 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. The Death Penalty in Jewish and American Law
10. Employment Law: What are unconscionable terms of employment in Jewish Law and American Law?
11. Artificial Insemination: A comparison of identity in Jewish and American Law
12. Intellectual Property Law: Do you own your idea in Jewish Law and American Law.
13. Juvenile Punishment in Jewish Law v. American Law
14. Rape in American law and Jewish law - treatment of rape victims, definitions of consent
15. Pshara vs. Arbitration: Attitude toward compromise in Jewish and American law.
16. Inheritance law: Bequeathing assets to daughters in Jewish and American law.