



Comparison of American and Talmudic Law II: Great Cases of Conflict

JUDS 4933H/ POLI 2199H

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PURPOSE AND SCOPE:

This comparative course is one of a two part series and 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. Build on the foundational differences between American and Talmudic law developed in JUDS 4932H/POLI 2198H and 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.

This course is a follow-up to the foundational course Comparison of American and Talmudic Law, although the foundational course is not a prerequisite. In the foundational course, we looked 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.

This course will focus only on substantive issues – including circumstantial evidence, capital punishment, and duress - 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, double spaced with standard margins) and one longer research paper (10-15 pages in length, double spaced with standard margins) during the semester to allow students to better explore additional aspects of comparative law in depth. The page limits will be strictly enforced. 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.

Late papers will lose one grade every 2 days. If you miss the presentation, you will lose one grade. Plagiarism will not be tolerated, and the Professor retains the discretion to deduct a grade, fail you for the assignment, or fail you for the semester for papers that are plagiarized or fail to adequately cite to sources.

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, 2015: 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, 2015: Self Defense

From the incident in Ferguson to George Zimmerman's acquittal in Florida, 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.

3. February 10, 2015: Equity in Law

When is a judge in Talmudic law allowed to apply the rules of equity and when is he bound to the strict letter of the law? What is Talmudic law's attitude toward compromise - is it considered ideal or is it considered a perversion of law? How does American law view arbitration?

4. February 17, 2015: Rules of Evidence

What types of evidence are allowed in Talmudic law? What types of evidence are allowed for the jury to hear in American law, and what types of evidence are excluded? How is circumstantial evidence treated in American law and Talmudic law, and what does that say about the system as a whole?

5. February 24, 2015: Presentation and discussion of first paper: Rape

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

6. March 3, 2015: Economic Competition

Does the laissez faire attitude of American law belong in Talmudic law? What are the contrary considerations in Talmudic law? Which system has it right?

7. March 10, 2015: Communal Responsibility: The Duty Requirement in American and Talmudic Law

When is someone obligated to save his brethren in American law? How is this requirement different in Talmudic law? Why are the requirements different, and what should the law ideally be?

8. March 17, 2015: The Privilege Against Self Incrimination

Do you have the right to remain silent in Talmudic law? Is it true that "Anything you say can and will be used against you in a court of law"? Why do American and Talmudic law differ on this topic, and what broader societal questions are implicated by the right against self incrimination?

9. March 24, 2015: Presentation and discussion of second paper: The 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 14, 2015: Family Law

What are the grounds for divorce in New York? What are the grounds for divorce under Jewish Law? Why did New York take so long to adopt the "irreconcilable differences" that exist in other states?

11. April 28, 2015: Interaction Between Legal Systems

How does American law handle Jewish law? How does Jewish law handle American law? Why is it important for both systems to be familiar with the other system?

12. May 5, 2015: 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. Bankruptcy Law: Compare Jewish Law perspective of the propriety of discharging personal debts with the American system.
5. Duty of Confidentiality in American law and Talmudic law
6. Contract Law: What is adequate consideration under Jewish Law v. American Law
7. Damages in American Law v. Jewish Law
8. Employment Law: What are unconscionable terms of employment in Jewish Law and American Law?
9. Artificial Insemination: A comparison of identity in Jewish and American Law
10. Intellectual Property Law: Do you own your idea in Jewish Law and American Law.

Inheritance law: Bequeathing assets to daughters in Jewish and American law.