Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion

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Abstract

There has been a “religious lawyering movement,” where religion has gained increased prominence in the legal profession and academia. This essay discusses one aspect of the movement, Jewish law in the American law school curriculum. The author describes four models for courses teaching Jewish law in American law schools, outlining their advantages and disadvantages. The first model teaches Jewish law in comparative law. The course would compare and contrast the substantive areas of law in both Jewish and American law. The second model teaches Jewish law in international law. By focusing on the impact of Jewish law on Israel’s legal system, students will view the application of Jewish law in on a modern secular nation. The third model would examine Jewish law with little, if any, reference to other legal systems. The fourth model is a synthesis of the previous three models, aiming to help students appreciate the relevance of Jewish law to a broad range of legal issues.

KEYWORDS: international law, comparative law, jewish law, legal education, religion
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Introduction

In recent years, religion has gained an increasing prominence in both the legal profession and the academy. Through the emergence of the "religious lawyering movement," lawyers and legal scholars have demonstrated the potential relevance of religion to many aspects of lawyering. Likewise, legal scholars have incorporated religious thought into their work through books, law journals and classroom teaching relating to various areas of law and religion.2

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This Essay is based in part on my participation in a panel discussion of the Association of American Law Schools Section on Jewish Law, conducted January 7, 1999, at the AALS Annual Meeting, in New Orleans. The discussion, titled Perspectives in Teaching Jewish Law – Independently and as a Part of a Law & Religion Program, was moderated by Professor Steven Resnicoff. Other panelists included Professors Michael Broyde, David Cobin and Yale Rosenberg. Many of the concerns raised by both the panelists and the audience members are reflected in my thoughts here.


2. There are numerous examples of the increased interest in law and religion, in books, law journals and the classroom. The term “law and religion” is a broad one, which may encompass many areas, including Free Exercise and Establishment Clause issues. Although such issues are certainly relevant to this Essay, I focus here more on the direct or indirect influence of religious ideas on the substance of the law, rather than discussing the effect of religion as the subject matter of primarily constitutional concerns. Of course, a better understanding of religion on its own terms should ideally inform and improve Free Exercise and Establishment Clause jurisprudence.
The aim of this Essay is to discuss one particular aspect of these efforts, namely, the place of Jewish law in the American law school curriculum. Specifically, I will outline briefly three possible models for a course in Jewish law in an American law school and consider some of the advantages and disadvantages of each model. I then will describe the structure I have chosen, in an attempt to synthesize these models, for the seminar in Jewish law that I teach at St. John's University School of Law.

I. Model One

In the first model, a Jewish law course serves as a course in comparative law, emphasizing conceptual foundations of the system of Jewish law. Focusing on substantive areas of law which find their parallels in the American legal system, this model analyzes the different concepts through comparisons and contrasts to American law. Such an approach has at least two apparent advantages. First, students who may be unfamiliar with Jewish law are likely to have some familiarity with and/or interest in the substantive areas of American law discussed. Indeed, one of the aims of this model is for students to appreciate the way a study of each legal system can illuminate an understanding of the other. Second, this model may be appropriate for the curriculum in many law schools, as it contains a strong comparative law component. One possible disadvantage to this model, when compared with other models that do

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4. It should be noted that there may exist numerous models for a course in Jewish law at American law schools, in addition to variations and hybrids of many of these models. Thus, my descriptions here provide somewhat simplified models for the purpose of sparking further and more complex discussion of the issues I have delineated. Moreover, the suitability of any of the models in a particular setting depends on a number of variables, some of which I acknowledge in the text, including the background of the students, the background of the teacher or teachers, the availability of appropriate course materials, and the academic environment and philosophy of the school. Each of these variables finds a wide range of realities in the different law schools throughout the United States that offer courses in Jewish law.

not incorporate American law, is that a teacher of such a course would be expected to have a working knowledge of, if not an expertise in, both Jewish and American law as well.

II. Model Two

A second model envisions Jewish law as a course in international law, to the extent that Jewish law impacts the legal system in the modern State of Israel. This model allows students to see the application of Jewish law within a modern secular nation, thereby providing an apparent contrast to the American ideal of law that separates church and state. In addition, the subject matter in this model, involving matters that affect the civil law of the State of Israel, may focus on issues that have direct analogues in American jurisprudence. Such a course might be more appropriate for a law school curriculum, as it deals with both comparative and international law. However, these strengths actually may suggest inherent weaknesses in the model, as a teacher of such a course would have to be competent to teach both Jewish law and specific modern legal systems. Moreover, an emphasis on the modern State of Israel might detract from the study of the system of Jewish law on its own terms.

III. Model Three

A possible response to these concerns is the third model, which examines almost exclusively Jewish law, with little, if any, reference to other legal systems. Because the subject matter is restricted to Jewish law, this model may offer the opportunity for students to study the Jewish legal system in a more comprehensive and systematic manner. Likewise, placing the focus of the course on a single legal system allows for a teacher whose knowledge of other legal systems, though potentially helpful, would seem generally unnecessary. Students in such a course, however, must be prepared to engage in the study of a legal system that may be unfamiliar to them, relying on their own ability to make comparisons and contrasts to areas of law with which they are more familiar. In addition, the subject matter of this model may not find as clear a place within a law school curriculum as the other models, although it might com-

6. Menachem Elon, a former Israeli Supreme Court Justice, has been a leading proponent and practitioner of this method, in both his scholarship and the Jewish law courses he has taught in various American law schools. See, e.g., Menachem Elon, The Legal System of Jewish Law, 17 N.Y.U. J. INT’L. L. & POL. 221, 239-43 (1985).
plement a curriculum offering courses in Islamic law or Canon law.7

IV. Model Four

The syllabus for the seminar in Jewish law that I teach at St. John's reflects my attempt to synthesize these different models, with the ultimate aim of helping students appreciate the relevance of Jewish law to a broad range of legal issues. As most of the students who enroll in the course have little or no background in Jewish law, we begin with a discussion of the sources and structure of Jewish law, from both a historical and a conceptual perspective. In an effort to make the students more comfortable with this material, I rely primarily on articles in American law journals. While I try to draw parallels to American legal structure and history whenever possible, this part of the course primarily provides an opportunity for a broad understanding of the mechanics of Jewish law through an examination of the Jewish legal system on its own terms.

We continue the introductory stage of the course with a look at interpretation in Jewish law. Through examples of both civil law and ritual law interpretation, I seek to demonstrate that these two components of the Jewish legal system share a common analytical framework and are inextricably linked. We thus continue the process of looking at Jewish law on its own terms by relying on the works of scholars of Jewish law, although a number of the examples I select yield obvious comparisons to issues in American law, in both substance and methodology. Likewise, discussions of authority in interpretation lead to comparisons to the structure of the American judiciary.

After these lessons, students usually feel that they have obtained a working knowledge of the Jewish legal system, sufficient to allow them to undertake explicit comparisons of substantive areas of law in the two systems. Therefore, the next stage of the course consists of discussions of criminal law, capital punishment, self-incrimination, confidentiality and abortion in Jewish law and American law. Most students already have a substantial interest in, if not a familiarity with, these areas of law. In addition, they often gain a new perspective on American law as a result of examining the contrast cases in Jewish law. In keeping with the comparative component

7. In fact, some law schools offer courses in Jewish law as part of a program in law and religion.
of the course, materials for these subjects are drawn from both American law journals and works of Jewish law.

The final stage of the course looks at the intersection of Jewish law with modern legal systems, particularly the United States and the State of Israel. Focusing on American get laws and kosher fraud laws naturally involves American constitutional law, which, in turn, is compared and contrasted with the dynamic of incorporation of Jewish law in certain areas of Israeli law. Moreover, the Israeli model introduces an international component to the course and exemplifies the difference between Jewish law and the law of the modern, secular State of Israel.

My syllabus offers one attempt to synthesize elements of some of the potential models for a course in Jewish law in an American law school, consistent with my goals in teaching the course. The substance and style of Jewish law courses vary widely in the different schools offering such a course. Nevertheless, it is my hope that, as both the legal profession and the legal academy continue to recognize increasingly the importance of religion in the lives of lawyers, Jewish law courses and scholarship will be seen as an integral part of the interface of law and religion.

APPENDIX

This Appendix presents a compilation of Articles, relating primarily to Jewish law, which have appeared in American law journals since 1995. The Appendix groups these Articles in broad categories, similar to those found in the Index to Legal Periodicals.

Admiralty

Commercial Law

Constitutional Law


Courts


Criminal Law


Economics


Evidence


Estate Planning and Probate


Family Law


Esther Rosenfeld, Jewish Divorce Law, 1 U.C. Davis J. Int'l L. & Pol'y 135 (1995).


Health Law & Policy


Human Rights


Intellectual Property


International Law


**Jurisprudence**


**Legal History**


**Legal Theory**


**Legislation**

Prisoners' Rights


Professional Ethics


Property