

The Dynamism of Premodern Jewish Legal Cultures: Circumstances, Contexts, Challenges

Proposal submitted by Beth Berkowitz, Simcha Gross, and Natalie Dohrmann

In the study of Jewish history and culture, “law,” perhaps more than any other term, is called on to do a lot of work, and it has concurrently been deployed, sometimes maliciously, to characterize and distinguish Jews and Judaism. Typically used to translate “Halakhah,” “law” has in modern liberal discourse been treated as a universal category that can be intelligibly studied across time, as if the very idea of what constitutes law, its shape, characteristics, the relationship of rhetoric to reality, and more, was not itself contextual and in flux.

This proposal approaches the question of law as a dynamic feature of Jewish culture. It attempts to change the landscape of the study of Jewish law and lawmaking by refining its evolution and function in a range of contexts in which law served as agent of change, as literary expression, as lever of assimilation and resistance, and as a political and theological discourse in a variety of historically conditioned arenas, in dialogue with circumambient legal cultures, philosophies and real political circumstances, opportunities, and limitations. We hope to bring theoretical paradigms as well as historical and cultural comparative data from a range of approaches into productive conversation.

The story of law--as theory and practice, as created by and imposed on Jews--is fundamentally the story of the dynamics of law across the lands in which Jews lived. That is, law is not only better understood in the broader Jewish contexts in which it was formed, but is itself a necessary component for understanding the dynamics of culture and history of each place and period. Thus we favor an approach that treats law as constituted by and embedded within, and informed by the historical, religious, intellectual, artistic, and political moment, and as engaging a wide variety of actors that includes Jews and non-Jews, men and women, people of different abilities, ethnicities, and origins, as well as animals, organisms, and things.

The premodern world offered a unique set of possibilities and constraints on Jewish production and thinking about law. As a minority group, or in brief moments a kingdom subject and subordinate to greater empires and hegemonic regimes, Jewish law was shaped by a variety of contextual circumstances. Without full autonomy, Jewish law was often an idealistic enterprise, a space in which Jews imagined legal systems but could not fully implement them. Even if idealistic, Jewish ideas about law were conditioned by their historical contexts. Notions of law and lawmaking, from specific laws, areas of law, and the very idea of the law, Halakhah, and law codes, was indelibly shaped by circumambient law making, whether Roman law for the Mishnah and Palestinian Jews, Byzantine and Sasanian law for Jews in the West and East, or Islamic and Christian legal schools and imperial laws in the medieval and early modern periods.

At the same time, Jewish law was created and practiced, and imperial law and its validity was negotiated. Jews contrived means of enforcement, whether social or political, with the approval (whether explicit or tacit), without the knowledge of, or in spite of the powers that be. The law was also a site in which Jews were categorized by the empire, and in which Jews contested, negotiated, internalized, and adapted those categories. A useful example of this is the Islamic category of *Ahl al-Kitab*, “People of the Book,” a category imposed on Jews, Christians, and others, but which, in time, was internalized and adapted by these communities, informing their self-identity, legal production, and more.

Jewish production and thinking about the law in the premodern world is rich precisely because it differs so radically from these processes in the modern world. While the premodern world was, itself, hardly homogenous, changing over time and place in small and substantial ways, a vertical year centered on the premodern would allow for greater understanding of the distinctive features of specific periods, but also what did—or did not—uniquely characterize premodern Jewish ideas and production of law more generally.

The texts and ideas produced by Jews in the premodern world were neither discarded nor rendered obsolete with the rise of nationalism, Jewish emancipation, and the formation of the State of Israel. They continue to shape modern Jewish notions about law and state. A year dedicated to the premodern world would therefore also, concomitantly, address the nachleben of these ideas despite, and perhaps precisely because of, the radically altered circumstances of the modern world.

Aims

- To advance a conversation about Jewish law in its broader historical contexts
- To advance a conversation about the impact of law and legal regimes on Jews of premodern periods.
- To trace law and legality into non legal discourses, genres, and realms

The Subunits

The three sections (there is of course some productive overlap, which will be apparent especially during the seminar). In addition to legal theoretical models and reading, all the fellows will share a range of concepts, *mutatis mutandis*, which can be refined in historical specificity, and expanded in broad conversation, such as: legal position of Jews; citizenship; courts; legal pluralism and jurisdiction shopping; legal professionals; halakhah and halakhic innovation; hermeneutics of sacred legal texts; rabbinic mediation/arbitration; legal and literary discourses; women and other “others” under the law; and more.

We here suggest just a few possible overarching questions that may be of collective interest to all of the pods, yet historicized and studied rigorously within each individual unit:

- How do Jewish theories of law change over time as they interact with different historical contexts?
- What is the relationship between halakhic texts and the social practice of law, as reflected in court documents and notarial records from disparate premodern Jewish communities?
- What sorts of exchange can be identified between Jewish and non-Jewish legal genres, substance, and practice? And how does the ubiquity and diversity of legal pluralisms influence both Judaism and ambient legal cultures?
- How can we trace evidence of negotiations between law, halakhah, and other sources of social and cultural authority (such as custom) in premodern Jewish societies?
- How does sovereignty--by Jews and over Jews--get theorized in different periods and places?
- How to apply findings of the growing field of law and religion in the field of Religious studies to Jewish studies and vice versa
- What new approaches and questions might inform a new intellectual history of Jewish legal ideas, within and across premodern periods?
- How do legality or legalism operate in a Jewish and non-Jewish intellectual projects?
- How might we configure the intersection between law and empire, and between race, religion, and territory, as it plays out in a variety of Jewish contexts?
- How are legal experts formed and authorized in different Jewish contexts, and how are they portrayed in the Jewish literary imagination?
- How does law inform or get refracted through artistic production?
- How do Jews and Jewish law get deployed in the broader legal discourses in which they play a role?
- What are the benefits and limitations of different disciplinary approaches to these questions: history, anthropology, sociology, literature, etc.

Since history makes a difference in the sorts of questions asked of the sources, the below are suggested formulations of the major questions of each historical subgroup.

I. Antiquity

Persian imperial law and its legacy in biblical law; law as depicted in ancient Jewish literatures; law and sectarianism; Qumran; the idea of Torah as law; Greek law; papyrus evidence from Egypt; arbitration; new landscapes in rabbinic and Roman/Sasanian law; Jewish status under imperial law; Christianity and late antique law; legal compilation; law and political resistance; law and theology

II. Middle Ages

Law in the age of Islam; Islamic legal cultures in the east and west; Canon law and the Jews; Law and economics, how halakhah/canon law/fiqh interact with state power; Jewish communal rule; legalism and antisemitism; Scholastic law; responsa; codes; and social organizers; theology and, and of, law

III. Early Modernity:

Jewish communal rule; enlightenment Europe; legalism and antisemitism; Hebraism and the European legal imagination in the early modern world, negotiating with sovereign powers, court Jews; the impact of nonlegal cultural developments (e.g., Pietism, Rationalism and Kabbalah) on formal and substantive formulations of premodern halakhah, the changing place of halakhah in the curricula of disparate premodern Jewish societies

Possible Applicants:

Ancient

Katell Berthelot
 Orit Malka
 Yakir Paz
 Yair Furstenberg
 Ishai Rosen-Zvi
 Kimberly Buell
 Kaius Tuori
 Oded Irshai
 Catherine Hezser
 Christine Hayes
 Seth Schwartz
 Hayim Lapin
 Liz Fried
 David Goldenberg
 Ron Naiweld
 Yael Wilfand
 Paula Fredriksen
 Steven Fraade
 Moshe Halbertal
 Mira Wasserman
 Clifford Ando
 Ari Bryen
 Al Baumgarten
 Erich Gruen
 Alyssa Gray
 Charlotte Fonrobert

Mira Balberg
 Rafe Neis
 Shlomo Naeh
 Barry Wimpfheimer
 Moshe Simon Shoshan
 Brent Shaw
 N. de Lange
 L. Foschia
 Pamela Barmash
 Yifat Monnickendam
 D. Andrew Teeter
 Alex Jassen
 Aryeh Amihay
 Ilan Peled
 Bernard Levinson
 David Wright
 Meir Malul
 Kimberly Czajkowski
 Capucine Nemo Pekelman,
 Paris
 Madeline Kochen, Michigan
 Law School
 Jeffrey Stackert, UofC
 Martin Goodman
 Ra'anana Boustan
 Derek Roebuck
 Tobias Scheunchen

Medieval

Luke Yarbrough
 Uriel Simonsohn
 Jessica Goldberg
 Ted Fram
 Ephraim Kanarfogel
 Talya Fishman
 Joseph Lowry
 Paola Tartakoff
 Eve Krakowski
 Mark Cohen
 Marc Herman
 John Tolan
 Hassan Khalileh
 Gideon Libson
 Rachel Furst
 Oded Zinger
 Mordechai Friedman
 Albrecht Cordes
 Brendan Goldman
 Zachary Chitwood
 Abigail Firey
 David Freidenreich
 Adam Kosto
 Atria Larson
 Maya Maskariniec

Evan Metzger
Patrick Morgan
Arietta Papaconstantinou
Victoria Paquette
Chris PreJean
Holly Robins
Mathieu Tillier
Faisal Abdullah

Early Modern

Francesca Trivellato
Jay Berkovitz
Adam Teller
Elisheva Carlebach
Tamar M. Menashe
Tamara Morsel-Eisenberg
Matthias Lehmann
Jessica Marglin
Lauren Benton
Debra Kaplan
Maoz Kahana
Oscar Aguirre-Mandujano
Verena Kasper-Marienberg
Avi Siluk, ABD Frankfurt
Roni Weinstein
David Schorr
Hillel Kieval
Francesca Bregoli
Amnon Raz Krakotzkin