

*Jewish Law and American Law: A Comparative Study*. By Samuel J. Levine. New York: Touro College Press, 2018. Vol. 1, Pp. 384. \$109 (cloth). ISBN: 9781618116550. Vol. 2, Pp. 238. \$109 (cloth). ISBN: 9781618116574.

Samuel Levine's new two-volume work, *Jewish Law and American Law: A Comparative Study*, is an important—even singular—study of both the substance and method of comparative legal studies in general, and of the comparative analysis of Jewish and American law more specifically. Comprising twenty-six chapters largely culled from Professor Levine's earlier writings published as law review articles, conference proceedings, and book chapters over the course of his fifteen-year career, this work provides a valuable overview of comparative Jewish and American law.

Levine begins with reflections on the state of Jewish law teaching in American law schools, including an overview of several different approaches and a brief outline of his preferred method for teaching Jewish law. This is especially interesting and worthwhile because, while Jewish law has become an increasingly popular offering in American law schools, those teaching such classes are still grappling with the best ways to approach the topic. Indeed, the problem goes beyond those faced in many other comparative law courses. While all comparative law classes must contend with familiarizing students with the rules, institutions, history, and practices of a foreign legal system, the vast majority of such systems share many familiar features with American law. At a most basic level, even these foreign law regimes are territorially bounded, bureaucratically administered and enforced systems designed to regulate public life under the aegis of contemporary states. Jewish law, however, defies many of these characterizations: it is not territorially bounded, administered, or enforced by political regimes, nor is it limited to the regulation of only public life. Jewish law is thus both more and less than what American law students typically understand as “law,” and this makes organizing and teaching Jewish law in American law schools conceptually and practically challenging. Levine's approach, though only briefly outlined, combines historical and conceptual presentations of the internal workings of Jewish law reinforced by more in-depth substantive comparisons of Jewish law doctrines with familiar counterparts in American law (2:4–5).

Across the two volumes, much of the book follows Levine's recommended framework for classroom teaching. In section one, he illustrates different approaches to engaging with Jewish law from an American law perspective. He also establishes some jurisprudential foundations for the comparative study of Jewish and American law, focusing on how each of these traditions thinks about interpretation, source methodology, and legal change and development—themes that feature prominently and repeatedly in later chapters. Subsequent sections substantively compare Jewish and American law approaches to capital punishment, self-incrimination, constitutional interpretation, legal ethics, jurisprudence, and criminal punishment, among other topics. Levine also includes several interesting forays into the influences of Jewish lawyers, Jewish law, and Jewish litigants in some famous (and some less famous) episodes in American legal history.

For seasoned Jewish law scholars, this book offers learned, sophisticated insights into a range of topics. In addition to being a distinguished legal scholar, Levine is also an ordained rabbi, and his very substantial facility with the classical sources and methods of rabbinic learning are evident throughout the book. Too often, comparative law works involve overly simplistic and superficial portrayals of foreign legal systems by nonexperts who consequently tend to draw poor analogies and misleading conclusions about these systems and their relevance to American jurisprudence. This is very much not the case for Levine's *Jewish Law and American Law*. American lawyers

with Jewish law backgrounds and rabbinic scholars properly concerned with the interaction between Jewish and American law will recognize Levine's analyses as the familiar legal discourses of a genuine Jewish law insider. In this respect, *Jewish Law and American Law* avoids the kinds of mechanistic presentations that Levine himself notes too often passes for genuine comparative legal analysis by many American courts and scholars (1:111–15; 2:95–110). Instead, Levine presents Jewish law in a manner that properly acknowledges its sophistication and nuance and the complex dynamics at play between text, tradition, interpretation, and practice. The quality of Levine's treatment of Jewish jurisprudence is at its zenith in his conceptual analyses of the interplay between text, tradition, interpretation, and authority in Jewish law and legal decision making. Traditional rabbinic scholarship largely eschewed comprehensive and systematic accounts of the philosophy of Jewish law, and Levine's original conceptual understandings of the juro-dynamics of rabbinic legal decision making evidence his deep and intuitive familiarity with Jewish law on its own terms.

American law scholars, too, whether interested in learning about Jewish law or concerned with gleaned new insights into familiar issues in American jurisprudence, will find this book a worthwhile read. Levine's ability to conceptualize and communicate traditional rabbinic legal texts and discourses in ways immediately familiar and relatable to American lawyers is evident throughout this book. While the substance of these discussions often involve Jewish ritual, biblical exegesis, and Talmudic dialectics, Levine offers up what for many is surely unfamiliar fare in the familiar language and rhetorical currency of American lawyering. Perhaps the best example of this is Levine's comparison of the "Brisker Method" of Talmudic analysis with the goals and methods of Richard Posner's law-and-economics approach to American legal studies. The Brisker Method, originated by Rabbi Chaim Soloveitchik in the nineteenth century, "features . . . an emphasis on precise definition and classification of legal concepts, often formulated through the framework of underlying dichotomies" in Talmudic norms and dialectics (2:143). In rabbinic circles, Brisker analysis is notoriously complex; yet, Levine deftly explains this Talmudic method using several classic examples from Jewish ritual and civil law, further clarifying the Brisker approach by comparing it to various aspects of law and economics jurisprudence, with which American scholars and practitioners are far more familiar (2:145–66).

Beyond the breadth of substantive topics covered and the depth and sophistication with which Levine addresses each issue, *Jewish Law and American Law* is perhaps best read as a programmatic text illustrating the fruitful possibilities of Levine's particular approach to comparative legal studies. Legal scholars undertake comparative legal studies with a variety of different aims and approaches. For some, comparative law is an end in itself, a scholarly pursuit that furthers knowledge and understandings of law as it exists and operates in other contexts and polities. Others use comparative law as a tool for promoting the harmonization of legal norms and systems across political and cultural boundaries. Still others approach comparative legal studies as a means for improving one's own legal system through sharpened understandings of its dynamics, evolutions, conceptual underpinnings, and latent possibilities that may be best uncovered by viewing one legal system against the backdrop of another. It is into this last category that Levine's work primarily falls. The bulk of this book follows a consistent pattern: In each chapter, Levine identifies a well-known issue in American law, explains the Jewish law approach to the issue, and offers ways in which understanding this rabbinic perspective could help inform approaches to addressing the previously identified concerns in American jurisprudence.

One of Levine's most informative and incisive illustrations of this approach to comparative Jewish and American law relates to the question of legal ethics, and specifically to the issue of how members of the legal profession relate to, interpret, and apply the increasingly legislation-like provisions of codes of legal ethics. Following other critics, Levine begins by identifying the tension

that exists between legal ethics standards that are increasingly regarded as positive law to be interpreted and enforced and the many broad provisions of legal ethics codes that some argue are too vague (1:245–54). In response to these concerns, Levine explains the important—even primary—role played by many broad biblical principles within Jewish law and the ethics-oriented interpretive approach that gives such standards meaning (1:255–67). Levine next utilizes this rabbinic approach to the normative value of broad ethical standards to suggest ways in which courts and lawyers might better understand and apply several specific provisions of the Model Code of Professional Responsibility (1:267–91). Levine follows a similar approach in his treatment of prosecutorial ethics (1:293–325), capital punishment (1:83–126), the Fifth Amendment right against self-incrimination (1:127–60), and approaches to constitutional interpretation (1:161–220), providing a wonderfully useful template for comparative legal studies.

If there is room for criticism of this worthwhile collection, it lies first (and perhaps unfairly) in what this book is not. While Levine is undoubtedly well placed and eminently qualified to produce *the* critically lacking teaching text for Jewish law courses taught in American law schools, and while he clearly has a firm conceptualization of what such a course ought to look like, *Jewish Law and American Law* does not serve that purpose—at least not obviously. This is a fine collection of interesting and learned essays, and some of the materials in this book are certainly suitable for use in classes on Jewish law; I use several of Levine’s articles, now book chapters, in my own Jewish law syllabus. However, the book contains both too much tangential material on Jewish American legal history and too little in the way of thick conceptual and historical overviews of Jewish law to serve as the blueprint and primary text for teaching Jewish law in American law schools. Additionally, while this book is extremely valuable as a framework for comparative Jewish and American legal studies, its worth would have been greatly enhanced by an essay more clearly explicating Levine’s comparative methodology.

It is unfair, however, to criticize a valuable work simply for not being the book that the reviewer would have written himself, and in that vein, two additional observations about the book that Levine *has* written are warranted. First, as a collection of many of Levine’s previously published writings, this book at times has a repetitive feel. Certain themes—Jewish law’s approach to understanding broad biblical standards and the interpretive explication of unenumerated legal rights and duties, to use two examples—appear and are explained several times in the book’s two volumes. While on one level this merely illustrated the firm conceptual underpinnings with which Levine approaches his comparative study of Jewish and American law, at times it leaves the reader with a sense that the work’s constituent essays could have been better integrated into book form. Second, and more substantively, several of Levine’s comparative studies of Jewish and American law evince what is perhaps an overreliance on black-letter Jewish law as it is found in the Talmud and major codes of rabbinic jurisprudence. This focus on Jewish law “on the books” helps facilitate cleaner comparisons and contrasts with parallel American doctrines, but also renders some such analyses somewhat two-dimensional. In many cases, Jewish legal rules reflect only default standards even as the internal secondary rules of rabbinic jurisprudence recognize expansive possibilities for communal legislation and discretionary judicial action that have historically rendered Jewish public law in practice far more flexible than the Talmud or codes might suggest.

Consider for instance, Levine’s treatments of Jewish law approaches to capital punishment. He reviews the burdensome jurisdictional, evidentiary, and procedural hurdles imposed by the rabbis to make it difficult for courts to execute criminals and considers at some length the similarities and differences between the Talmudic context and contemporary American setting that may urge for or against the adoption of Talmud-inspired hesitations towards capital punishment. Largely absent

from Levine's discussion, however, is the fact that Talmudic treatments of this issue pertain only to the formal enforcement of biblical law, while the rabbinic authorities also recognized broad discretionary authority to make and enforce public norms designed to create public order. In fact, the historical record shows that rabbinic authorities were hardly squeamish about enforcing such extra-legal standards, even with corporal and capital penalties. This realization is important in that it potentially changes the way one might look at the relationship between Jewish law as it appears "on the books" and American law with respect to capital punishment. While black-letter Jewish law does indeed evince hesitancy towards executing criminals, a better analogue to American law—which is made not in response to divine command, but in order to achieve public policy aims—might be to Jewish legal practice broadly considered as including the use of rabbinic discretion to make and enforce alternative norms for the maintenance of public order in Jewish societies. When working in this latter framework, rabbinic scholars exhibited much less hesitancy in the use of extreme law-enforcement measures when they believed the situation warranted; and this perspective perhaps suggests a very different way of thinking about American approaches to capital punishment and criminal punishment than the ones Levine offers here.

Ultimately, it is important to keep in mind that Levine has distinguished himself as one of the foremost scholars and teachers of Jewish law in the American legal academy. Perhaps most importantly, Levine has taken on the role of gatherer and keeper of all things Jewish law within the American law school universe. At Touro Law School in New York, Levine has established and cultivated the premier collection of Jewish legal materials in an American law school, and his Jewish Law Syllabus Project—a database of course materials used in law and business schools across the United States—is an invaluable resource for those working on and teaching Jewish law in the American academy. *Jewish Law and American Law* is perhaps best viewed in this context, as a work that helpfully gathers some of the most important and useful studies of comparative Jewish and American law in one place, and provides a valuable resource for those interested and working in the field.

*Shlomo C. Pill*

*Senior Lecturer, Emory University School of Law; Senior Fellow and Deputy Director of Law and Judaism, The Center for the Study of Law and Religion; Managing Editor, Canopy Forum (canopyforum.org).*