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Jewish Law and Academic Discipline, Contributions from Europe

EDITORS' INTRODUCTION

This volume is dedicated to expanding the conversation about methods and the study of Jewish Law. The articles presented here all raise issues that follow from the challenges of the disciplined effort to research, teach, and do Jewish Law. Their diversity is as wide as the breadth of subjects that Jewish Law scholars must encompass at a university level. As a contribution to the conversation about the discipline, the articles address or illustrate some of the multiple perspectives on the definition of our academic discipline, and of the need for such definition. A natural stimulus for this methodological discussion has also been the recognition, highlighted in a number of the contributions, of the need to transcend definitions that had developed under particular conditions which no longer apply.

The scope and nature of Jewish Law as a discipline differs in different contexts, and this is most obviously so when we contrast its state in Europe with its state in North America and Israel. More than the Jewish Law discipline differs within multi-national Europe, it collectively differs from the North American and Israeli versions. While the European Jewish community is smaller, and there are fewer specialist departments and university posts in Europe devoted to Jewish Law, this marginalization has proven a source of strength in a number of respects. European marginalisation played a role in the rise of our discipline at the end of the First World War: it was then a field of study in which the founding scholars knew much about each other's work and thus laid the groundwork for an expectation that new generations of scholars will first acquire knowledge of past and contemporary research in order to offer their own findings.

Moreover, the marginal status of the study of Jewish Law in contemporary Europe continues to be a source of the distinctive strengths of European contributions to the discipline. This is true, for instance, with respect to the discipline's relationship to the organized bodies of practitioners of Jewish Law, whether these are denominational or political in nature. Even as denominational or other practitioner perspectives are regularly featured in the conferences of the Jewish Law Association, and particular practitioner perspectives are taken for granted in much of the broader academic network focused on Jewish Law in North America and in Israel, the situation differs in the European reality in which smaller Jewish communities provide an embracing context for relatively little of the scholarship and teaching conducted there. Even those European specialists in Jewish Law who are identified with a religious movement will tend to recognize the impact of some form of denominational spectrum. It has long been the case, too, that a good proportion of the denominationally-affiliated scholars in Europe deliberately analyze Jewish Law in ways that are cross-denominationally acceptable. Furthermore, many European Jewish Law scholars develop interests in the study of Jewish Law wholly unrelated to contemporary denominational or institutional politics. In these respects, European research and debate differs from the general state of the discipline in either Israel or North America. The research of scholars living in a cross-denominational, or a non-denominational, reality provides a variety of examples of how even a practitioner perspective can develop to recognize the

importance of other perspectives, or the value of focussing their work on research questions that are unrelated to denominational interests in the practice of Jewish Law.

That Jewish Law research in Europe is conducted by members of a relatively marginal scholarly group, collectively confronted with a multi-national context, also creates a heightened awareness of the varied forms of state intervention in Jews' own definition of normative Jewish Law. This is recognizable not only in research on the contemporary application of Jewish Law. It is also a basis for fruitful research on the varied ways in which Jewish publics perceive and identify the content of their Jewish Law in their everyday or existential contexts.

And last, the reality that there are fewer specialist departments and posts in a secular or a pluralistic European university setting means that Jewish Law can sit equally in a law department or in a faculty devoted to other related disciplines – to history, or to theological or religious studies, for instance. It means that Europeans often engage with the subject as a humanistic endeavor, or as part of a wider humanistic endeavor. This framing encourages scholars to view Jewish Law both as the product of a continuous voice central to European or Western civilization and also as a minority counter cultural discourse that can bring into view that which the hegemonic culture displaces. This perspective, in turn, also affects the research conducted on Jewish Law in multi-disciplinary Jewish studies departments present in the leading universities of a large majority of European countries and in the somewhat fewer seminaries devoted to rabbinic studies on the continent. It counterbalances the temptation to conduct research in Jewish Law on a conceptually abstract level.

If we may speak of this as a common European dynamic, this dynamic speaks equally to the contexts in which Jewish Law is fashioned in the universities of North America and Israel, though at one remove from the European locations that serve as the models. The humanistic context for North American scholarship has also been a concern addressed by some of the leading figures engaged with the discipline there, with obvious differences given the different context which applies in the United States of America and in Canada. This is the reason for which this volume of the *Jewish Law Association Studies* has sought to feature exclusively contributors who are European researchers or who have worked on their subject in a European context and who have an interest in that context. It offers a corrective to the appealing temptation to study Jewish Law in the abstract and to overlook the wide range of contextual real life and humanistic agendas which influence the study of Jewish Law. The interest developed here is not in a uniquely European discipline, but in European contributions to the discipline as it stands internationally.

The multiple issues and characteristics of the European practice of Jewish Law as a marginal activity are addressed in the contributions gathered in the first section of the volume, "Jewish Law as the Law of a Minority". These contributions examine concrete challenges that the Jewish community now faces and had faced as a minority community with its own practices and norms, its own laws. They also raise questions about the conceptualization of Jewish Law as having a marginal quality, both in relation to national law and in relation to the broader conceptualization of law in European society and European history. They also examine how a marginal status provides a lens through which Jewish citizens experience the full array of

sources of law with which they are presented, some clearly 'Jewish', others clearly 'not Jewish', and others still viewed as both 'Jewish' and 'not Jewish'.

The section begins with Hendrik Pekárek-Hinz's presentation of the impact of state law in Germany on the internal development and application of Jewish Law, even in relation to ritual law – specifically sacrosanct circumcision. Pekárek-Hinz traces the key arguments through which the nature of Jewish circumcision law is construed by German lawyers, and unveils a distinctive German–Jewish construction of Jewish Law. This first section of the volume continues with an article examining in an earlier historical context the ways in which Jewish Law has been construed as a feature of European legal traditions. Stephan Wendehorst presents a historical explanation of the conditions specific to the Holy Roman Empire of the latter half of the eighteenth century under which Jewish Law was recognized as one of the state's multiple ecclesiastical jurisdictions. The section then continues with a review of one of the multiple models that European rabbis have used in order to grapple with the tensions between state law and Jewish law. David Fine revisits key nineteenth century European Jewish debates about modernity and law, updating the arguments made so that they may serve as a basis for an updated version of positive-historical Judaism. This first section then concludes with Amos Israel-Vleeschhouwer's paradigm shift in the study of the relationship between Jewish Law and other sources of law, focusing on individual Jews' lived experiences of 'their' Law – 'Jews' Law' – rather than on tensions between legal systems. He presents the study of 'Jews' Law' as a new field in Jewish Law that promotes research into the multiple versions of lived law held by differing Jewish groups, taking into account how differently each incorporates, and thus modifies, diverse Jewish laws and Gentile laws. In sum, this first section is devoted to illustrating different ways of observing how and why changing approaches to the role of Jewish Law develop under diverse conditions.

The second section, "Jewish Law as Humanistic Law", provides four complementary exemplars of what it means to treat Jewish Law as a humanistic discipline. These articles draw heavily on interdisciplinary or multidisciplinary scholarship, and speak to a series of contexts in which Jewish Law is a lens for, and is interpreted through the lens of, a broad humanistic scholarly enterprise. This second section begins with George R. Wilkes' examination of why it is that we currently need to discuss the nature of teaching and learning Jewish Law as part of the interdisciplinary humanities of the European university, and what the challenges of and means for such study are. The section continues with an article which extends this concern with the role of a scholar's personal self-awareness further. Federico Dal Bo illustrates how a scholar's self-reflective awareness of his or her loving relationship with beloved texts allows her or him to discover existential tensions – such as the tension between passionate curiosity and normative restraints. The next article in this section examines what it means to read Jewish Law sources humanistically. Elisha Anselovits proposes a new hermeneutic for researching Halakhah as practical wisdom – beginning with Second Temple Jewish Law. The section concludes with an essay focused on what it means to apply Jewish Law humanistically. Nechama Hadari provides a counter hegemonic use of, and argument for, normative Jewish Law as a process that does more than answer questions that have clear precedents while leaving secular professionals, rules, and laws to address life's other questions. Hadari argues

that we must address the complexities of real life by reflecting seriously on them, by struggling with them, from within a rich study of Jewish Law.

In closing, we thank the reviewers for their ready and constructive critiques, and for their preparedness to engage with articles which challenged the predominant methodologies that are applied in their scholarly fields – whether this was thanks to the deployment of an unusually interdisciplinary scope or because of the adoption of an innovative approach to Jewish Law. Thank you, reviewers, for combining your sharp minds with broad hearts.

Elisha Anselovits and George R. Wilkes, co-editors