1: Amos ISRAEL-VLEESCHHOUWER, Systemic, Dynamic and Complex analyses of the Interaction of Jewish and Other Legal Systems

Jewish law is by itself a dynamic and complex legal system, which interacts with multiple others, including legal systems. The article demonstrates the systemic complexity of interactions between Jewish and other legal systems, as well as the dynamic nature of the systems and the interactions. Common approaches seek to reduce the complexity, focus only on parts of the interactions and use metaphors and models to discuss them. Building on these partial approaches the article proposes a methodology, which seeks to embrace the full complexity. Restrictions, objections and practical issues are discussed as well as some methodological options and potentials.

2: Leah BORNSTEIN-MAKOVETSKY, Adultery and Punishment among Jews in the Ottoman Empire

This study seeks to uncover the various factors that determined Jewish recourse to or avoidance of Ottoman authorities in cases of adultery in the sixteenth-nineteenth centuries. The discussion will be based on the Ottoman Criminal Code, the Islamic law and documents from Ottoman courts of law, on the one hand, and on material found in the responsa literature, divorce decrees, and Jewish legal court records, on the other hand. The article will also refer to the extensive research literature that discusses the Ottoman criminal law and the courts of the Ottoman Empire.

3: Lea JACOBSEN, A Mother’s Legal Authority over her Offspring’s Marriage in the Ancient Near East and the Bible

Mesopotamian and Biblical societies in antiquity were characterized by their patriarchal nature. Therefore in those ancient writings, in which the patriarchal system is clearly regnant, one would expect the exclusive presence of a dominant, authoritative father figure. However, Mesopotamian and Biblical texts, especially legal ones, attest that the father’s exclusiveness was not distinctive. In many sources, the mother is also mentioned in various contexts and in a number of different areas, primarily in those pertaining to her offspring such as, their marriage, their behavior towards her, and their education.

In this article I address the question of mother’s legal authority over her offspring’s marriage. I discuss the following questions: Did the mother in Mesopotamia and Biblical Israel possess legal power over the marriage of her offspring, sons and daughters? Were the mother and father partners in making decisions regarding their offspring’s marriage? And if so, what was the extent of their partnership – full or partial? Examination of Mesopotamian legal sources, attest to the mother possessing legal power in arranging her offspring’s marriage, alongside the father. In the Bible, there is no solid basis for asserting that the mother had indeed legal authority in arranging her offspring’s marriage.

4: Ruth LAMDAN, Jewish Encounters in Muslim Courts: The Ottoman Empire, 16th-17th Centuries

This article shows that in contrast to common conventions, and despite the rabbinic prohibition to apply to gentile legal instances, Jews all over the Ottoman Empire turned regularly to Muslim courts.

Though the Jewish subjects, as other non-Muslim communities, had to respect the Ottoman law, and obviously were summoned to Muslim shari’a courts on criminal, financial and other matters, the Jewish communities had de facto jurisdictional autonomy on halakhic and internal matters. However, the bulk of Ottoman registers and court protocols, as well as the responsa literature, demonstrate that Jews applied directly to Muslim legal authorities without having any previous consideration in batei din and without awaiting a rabbinic decision. Moreover, even community leaders – having no massive power of enforcement - did not hesitate to apply to Muslim courts on various communal matters. Jewish individuals and rabbis were well acquainted with Muslim law in general, and with personal and inheritance laws in particular.

Interaction between the Jewish leadership and the Ottoman administration was mainly with reference to tax payments, fiscal arrangements and misbehavior of certain offenders. But individuals applied to Muslim judges on a variety of financial, personal and marital matters. The qadi’s judgments on marital and inheritance laws complied with the Quran, which – on certain matters - is more favorable to women than Jewish law, and women and their relatives knew how to take advantage of this fact. So did childless men and women who had no direct heirs and wealthy Jews who wished to protect their property for future generations and took advantage of the legal option of registering a waqf in Muslim court.

The many cases where Jews preferred to sue their co-religionists before a local kadi in order to solve personal and economic problems indicate that they obviously expected to have justice there.
5: Donna LITMAN, Rules of Statutory Construction for Biblical and American Laws – A Comparative Analysis

This paper considers thirteen principles or *middot* used to interpret the Torah and compares them to general American canons of statutory construction. Whether Jewish law and American law employ the same rules is important because of the increased interaction between Jewish and American law. To facilitate the comparison, Jewish law is viewed through the lens of American law and the terminology employed in construing American statutes. This paper also considers whether the manner in which the law is constructed affects how it is construed. The thirteen *middot* are discussed under the following seven categories: (1) application by inference, (2) meaning by analogy based on form, (3) generalization of specifics, (4) interrelationship of general and specific, (5) effect of special cases, (6) meaning by context and (7) harmonization of conflicts. It compares these *middot* with the following general canons of statutory construction under American law: (a) the rule of *kal va*-*bomer* with judicial *a fortiori* inferences, (b) the rule of *gezerah shavah* with the modern meaning of legislative silence, (c) the rule of *binyan av* with judicial synthesis of case law, (d) the use of general and specific language and the doctrine of *generalia specialibus non derogant*, (e) the significance of order of language and the doctrine of *ejusdem generis*, (f) the importance of context and the rule of *noscitur a sociis* and (g) harmonization of potential statutory conflicts and the doctrine of implied repeal.

6: Avinoam ROSENAK, Jewish law as Staging Directions

In this paper I have traced the gap between “stage instructions” and the performative events per se in halakhah. In doing so, I have attempted to note certain performative principles involved in the analysis of the halakhic event and the size of the gap between theoretical “halakhah” (which had until now been the central object of research for understanding “halakhah”), and the actual event of execution of the halakhah—in which the halakhah as practiced is the “halakhah.” Together with this, I have noted the parallel between these insights and the system of general law, and have also pointed out that which is similar and different to the phenomenon discussed here in non-halakhic systems (such as the military).

7: Chaim SAIMAN, Talmudic Analytics and Ethical Thought: A study of the Jewish law of the Worker’s Wages as an argument for Neo-Lamdanut

Talmudic law often appears autistic to even basic forms of moral, ethical or jurisprudential inquiry. Across a number of well-known examples, the Talmud subjects the Bible’s straightforwardly ethical commandments to a dizzying array of sub-rules, expansions and exclusions that are wholly contrary to the spirit and themes of the underlying verse. Using the laws prohibit delaying the payment of a worker’s wages as a case study (*halanat skhar sakhir*), this article investigates the different strategies developed within the tradition to bridge the gap between halakhic rules, moral intuitions and coherent social policy. After demonstrating the drawbacks of existing approaches, the article proposes an updated form of analysis termed *neo-lamdanut*. In line with classical halakhic methodology, *neo-lamdanut* delves head first into the give-and-take of Talmudic discourse. At the same time however, it employs a variety tools developed by legal and literary theorists to analyze the form of halakhic reasoning and the substance of its doctrines. The result is a more holistic conceptualization of halakhah—one that explicitly articulates the goals and methods of rabbinic law and explains the centrality of halakhic study in Jewish life.

8: Shana Strauch SCHICK, Reading Aristotle in Mahoza?: Actions and Intentions in Rava’s Jurisprudence

Rava, the prominent fourth-generation Amora, instituted a significant development to the theory of tort law in the Bavli. Prior rulings from earlier generations of Amoraim consistently apply the principle of strict liability to tortfeasors, wherein intention plays little or no role in determining guilt. Remarkably, Rava innovated a requirement of intention in order to render liability for both civil and ritual violations. He also carved a distinction between damages caused through negligence and those resulting from intent, and assigned corresponding degrees of liability. Within the realm of ritual law, he exempted those transgressions which result not from any malicious intent, but from mere physical desire. At the same time, he was among the first to maintain that intention is not necessary in order to fulfill one’s religious obligation.

A close analogue to Rava’s system can be found in Aristotle’s discussion of corrective justice in the fifth chapter of his *Nicomachean Ethics*. For Aristotle, legal and moral culpability necessitate intent. Consequently, Aristotle exempted from liability not only damages incurred accidentally, but also torts committed out of passion. Given the similarity between Rava’s and Aristotle’s respective approaches, and given the intellectual and philosophical atmosphere prevailing over Rava and his circle, there is much to be discovered concerning the moral concepts underlying Rava’s legal thought.
9: Yaakov SHAPIRA, Couples’ Place of Residence and the dispute of Rabbenu Tam and the Maharam: Society, Religion and Halakhah

The couple's place of residence is not currently regulated by law. This was not the case in the past. Mishnaic and talmudic sources indicate that the bride customarily went to live in the groom's place of residence, and living in the house of the bride's parents was not socially acceptable. Later on, and in reliance on the law of the Mishnah, the Gaonim and most of the Rishonim ruled that for as long as the spouses had not determined otherwise, the woman was obligated to join her husband in his place of residence and if she failed to do so, would be considered a “rebellious wife”.

However, Rabbenu Tam ruled that as a rule it was the husband who was obligated to relocate to the wife’s locale. About one hundred years later, Maharam of Rothenburg expressed his adamant opposition to Rabbenu Tam’s ruling that the woman was obligated to take up residence in her husband’s dwelling.

This article seeks to suggest historical context as an explanation for the dispute between Rabbenu Tam and Maharam of Rothenburg. My basic thesis is that their respective rulings were given in response to the differing social realities that they encountered, so that their basic positions and rulings were guided by social considerations and realities. These social realities related to the involvement of the Jews in international trade in the 12th century (Rabbenu Tam’s period) on the one, and rising social tension in western European Jewish communities with respect to the woman’s standing and role in marriage during the 13th century (Maharam’s period) on the other hand.

10: Daniel SINCLAIR, Kiddush Hashem (Sanctification of the Divine Name) and Some Aspects of the Halakhic Turn to Non-Jewish Standards in Ritual Law and Morality in the Modern Period

The concept of Kiddush Hashem in Jewish law includes the obligation to ensure that halakhic practice does not fall below non-Jewish religious and moral standards. The influence of this obligation on areas of halakhah such as dietary matters, Sabbath observance and the dignity of the Synagogue goes back to the post-Talmudic Period. It also played an important role in the development of modern Jewish law in relation to abortion and assisted reproduction in the second half of the 20th century. This type of Kiddush Hashem manifests itself in a tendency to issue rulings stricter in nature than those required under normative Jewish law in order to ensure that the halakhah accords with the religious and moral standards of the gentiles. It does not, however, justify the breach of an established halakhic rule or principle. A more radical form of this type of Kiddush Hashem began to develop in the late 19th and early 20th centuries and appears to be gaining ground in contemporary writings especially in the area of the laws of war. According to this approach, Kiddush Hashem justifies the adoption by the halakhah of universal, rational moral principles even at the expense of well-settled halakhic norms. The leading and most radical representative of this, albeit minority position is R. Moses Samuel Glasner (1856-1924), and other representatives include R. Hayyim Hirschenson (1857-1935) and R. Abraham Isaac Hacohen Kook (1865-1935). The article concludes with a reference to the possible influence of this approach to Kiddush Hashem on the role of public international law on the halakhah of war.