Welcome

ברוכים הבאים

to the 17th International conference

of the Jewish Law Association,

held in conjunction with the

Yale University Program in Judaic Studies

July 30-August 2, 2012

The conference organizers wish to express appreciation for support from the David A. Oestreich Fund through Yale's Program in Judaic Studies

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Practical Information

1. *Check-in arrangements*

Please check into your accommodation *before* coming to the conference registration. Check-in will be available at Swing Dormitory (Building 2 on the map, entrance at 100 Tower Parkway) and Residential College (Silliman, Building 1 on the map, entrance at 505 College Street) from 12.00-17.00 on Monday 30th July. After that, There are directions on the gates of Swing and Silliman for those who arrive at other times. Check-in at The Study at Yale Hotel (Building 5 on the map, entrance at 1157 Chapel Street) opens at 3.00 p.m. (check-out by at 12 noon).

The Conference registration, where you will receive your conference bag, badge and booklet, will be open from 3.00-5.00 p.m. at the Law School (Building 3 on the map, entrance at 127 Wall Street).

A reception desk for the conference, for later arrivals and general enquiries, will be available at the Law School throughout most of the conference. There will also be a message board, where messages to other participants and conference staff can be posted.

2. *Locations*

All conferences sessions, and coffee breaks, take place in the Law School, in the rooms to be indicated in the final version of the program.

Room 124 (coffee breaks) is also available as a lounge. There is also a Bar available at the Study at Yale Hotel.

All conference meals, plus the evening receptions, take place in the President's Room in Building 4, Woolsey Hall, entrance at 500 College Street

There is disabled access in all buildings.

3. *IT facilities in session rooms*

Computers equipped with Powerpoint and projection facilities are likely to be available in all session rooms, so that you need to bring only a flash drive with your file for projection. However, as a safeguard against technological failure/delays, you are advised wherever possible to bring copies (suggest: 50) of a single-page handout version of the structure of your paper and texts to be discussed.

4. *Meals and Kashrut*

Participants may take only the meals which they have pre-booked. Staff will check you off a list as you enter the dining room. The booking forms at *http://www.regonline.com/jewishlawconference* remain open until Monday 16th July, in case you now wish to book meals not previously indicated. After that, no further meals requests may be made.

All food being served is prepared by Margery Gussak under the supervision of a mashgiach of the Hartford Kashrut Commission. The food is being cooked (in temporary premises in the courtyard) on special ovens that the caterer is bringing. It is then to be carried up to the second floor in bulk and will be plated under hashgacha in a designated part of the kitchen and then carried into the room by the waiters.

5. ***Minyanim***

Shacharit will be at 7:15 am Tuesday and Wed., 7:10 on Thursday in the Law School, room 124.
Minchah will be at 1.15 pm Monday Tuesday and Wednesday, in the Law School, room 124.
Ma'ariv will be at 7.45 pm Monday Tuesday and Wednesday, in the Law School, room 124.

Daveners are recommended to be prompt to take lunch and dinner, so that the minyanim will be finished in time for the 1.30 and 8.00 p.m. sessions

6. ***Program Changes***

Any changes to the program subsequent to the version of 15th July will be posted on a conference notice board at the reception desk, and also on the daily room timetables posted on the doors of session rooms.

7. ***Contact for further information/assistance***

Further information/assistance on practical matters may be sought from the conference administrator, Renee Reed <renee.reed@yale.edu>.

From Friday 27th July, Bernard Jackson will have only intermittent e-mail access, which should always use jacksob@hope.ac.uk.

Program (as at 15th July 2012)

Monday 30th July

17.00-18.30 **Session 1**, **Opening Plenary**, Law School Room 127

Chair: Larry Rabinovich (New York)

Welcome by Professor Steven Fraade, Mark Taper Professor of the History of Judaism and Chair of the Program in Judaic Studies, Yale University

Panel discussion of the themes of the conference: Interaction of Jewish and Other Legal Systems from Ancient to Modern Times, with Steven Fraade (Yale University), Christine Hayes (Yale University), Amos Israel-Vleeschhouwer (IDC Herzliya), Bernard Jackson (Liverpool Hope University)

18.30-20.00 **Dinner** (President's Room, Woolsey Hall)

20.00-21.30 **Session 2**: **Emerging Scholars' Plenary Session: A Career in Jewish Law Scholarship**, Law School Room 127

Chair: Samuel J. Levine (Touro Law Center)

The following scholars will make brief presentations regarding their research plans and career aspirations, and receive feedback:

Ira Bedzow (Emory University), Yitzhak Ben David (Bar-Ilan University), Marc Herman (University of Pennsylvania), David Kalman (University of Pennsylvania), Shlomo Pill (Emory Law School), Jacob Weinstein (Touro Law Center), Ethan Zadoff (CUNY Graduate Center)

The following scholars, who are presenting full papers at the conference, will also be introduced:

Amy Birkan (Hebrew University of Jerusalem), Mark Goldfeder (Emory University), Omer Michaelis (Tel Aviv University), Sagi Peari (University of Toronto)

21.30-22.30 **Reception** hosted by Dean Patricia Salkin of Touro Law School in honour of the Emerging Scholars, (President's Room, Woolsey Hall)

Tuesday 31st July

7.30-8.15 **Breakfast** (President's Room, Woolsey Hall)

8.30-10.00 **Session 3**

3A: Jewish Law in Dialogue in the Early Modern Period, Law School Room 129

Chair: Michael Chernick (HUC-JIR, New York)

Birgit Klein (Hochschule für Jüdische Studien, Heidelberg) – Transfer of Family Property in Early Modern Ashkenazic Jewry in Interaction with non-Jewish Legal Practice

Tamar Salmon-Mack (Ariel University Center), "The influence of the Polish private law on precedence in debt collection and *ketuba* collection customs in early modern era Polish communities"

3B: Conceptualising the Relationship between Secular and Religious Law, Law School Room 128

Chair: Lena Salaymeh (UC Berkeley School of Law)

Michael Baris (Sha'arei Misphat Law College) – Models of Creativity, Restraints of Humility: Secular Legislation through the Prism of Jewish Law

Richard Hidary (Yeshiva University), Talmudic Topoi: The Hermeneutical Methods of Legal Midrash and Greco-Roman Rhetoric

10.00-10.30 **Coffee Break**, Law School Room 124

10.30-12.00 **Session 4**

4A: Secular and Religious Law in Israel, Law School Room 127

Chair: Ron Kleinman (Ono Academic College)

Moshe Drori (Hebrew University of Jerusalem) – First Born Son or Stepchild: How the Secular Legal System of Israel Views the Jewish Rabbinical Courts

Amihai Radzyner (Bar-Ilan University) – The Influence of Secular Law on the Halakhic Process: The Problematic Case of the Current Israeli Rabbinical Courts

4B: Sexuality, Marriage, and Divorce in Antiquity: Concepts and Contacts, Law School Room 128

Chair: Jeffrey Rubenstein (New York University)

Yifat Monnickendam (Johns Hopkins University) – Jewish Influence on Christian Legal Terminology: The Case of Ephrem the Syrian

Leah Jacobsen (Gordon College) – The Mother's Legal Authority over Her Offsprings' Marriage in the Ancient Near East and the Bible

4C: Autonomy and Justice, Law School Room 129

Chair: Steven Friedell (Rutgers School of Law)

Amy Birkan (Hebrew University of Jerusalem), Autonomy in Talmudic Law and Its Limitation of the Scope of Victimhood

Shana Strauch Schick (Bar-Ilan University) – Aristotelian Ethics and Corrective Justice in the Rulings of Rava

12.00-13.30 **Lunch** (President's Room, Woolsey Hall)

13.30-15.00 **Session 5**

5A: Interpretation in Jewish and Other Legal Systems, Law School Room 127

Chair: Moshe Drori (Hebrew University of Jerusalem)

Aviad Hacohen (Sha'arei Mishpat Law School) – Interpretation According to "Intent" of a Law and "Legislative Intent": Jewish Law as compared to other Legal Systems

Elisha Ancselovits (Yeshivat Maale Gilboa) – Beyond Deductive Dialectics: Rereading the Stama as Refracting Tannaitic Narrative Typifications

5B: Secular Legal Models and Jewish Law, Law School Room 129

Chair: Michael Broyde (Emory University)

Sagi Peari (University of Toronto) – The Two Riddles of Legal Positivism: the Case of Jewish Law

David Nimmer (UCLA School of Law) – Austrian Law as the Template for a Halakhic Ruling

5C: Family Law in Islamic Contexts, Law School Room 128

Chair: Christine Hayes (Yale University)

Lena Salaymeh (UC Berkeley School of Law) and Zvi Septimus (University of Toronto) – Marriage for sex in medieval Jewish and Islamic legal debates

Aharon Gaimani (Bar-Ilan University) – Levirate Marriage among Yemenite Jewry: New Documents (in Hebrew), full English Texts in conference booklet

15.00-17.00 **Yale Outing:** Visit to the Yale Judaica collection, featuring materials relevant to the theme of Jewish law, and to Yale's Babylonian Collection, led by Nanette Stahl, Yale's Judaica Curator, plus (circumstances permitting) the Beinecke Rare Book Library and the Law School Library.

17.00-18.30 Session 6

6A: Jewish Law and Civil Law, Law School Room 129

Chair: Yuval Sinai (Netanya Academic College)

Ron Kleinman (Ono Academic College) – The Halakhic Validity of Civil Law and Civil Adjudication in Israel: The Position of R. Israel Grossman in *Responsa Mishkenot Israel*

Israel Zvi Gilat (Netanya Academic College) – Confiscation of Property during Conquest: A Capricious Act?

6B: Historical Aspects of Jewish Law, Law School Room 128

Chair: Daniela Piattelli (Roma Tor Vergata)

Haim Shapira (Bar-Ilan University) – Jewish Courts under Roman Rule: The Tannaitic Evidence

Lawrence Kaplan (McGill University) – On Putting Humpty-Dumpty Together Again: The Legal Philosophy of Maimonides' Introduction to the Commentary on the Mishnah as Contrasted with his Later Works

6C: Jewish Law and International Law, Law School Room 127

Chair: Zvi Septimus (University of Toronto)

Michael Broyde (Emory University) – Jewish Law and International Law: Halakha and the Law of Nations

Ilan Fuchs (University of Calgary) and Aviad Hollander (Bar-Ilan University) – Rabbi Shlomo Goren and International law: A critical dialogue with concepts of sovereignty and human rights

18.30-20.00 Dinner (President's Room, Woolsey Hall)

20.00-21.30 Session 7: Plenary Panel: Contemporary Issues on the Interaction of Religious and Secular Law, Law School Room 127**:**

Chair: Phillip Ackerman-Lieberman (Vanderbilt University), with Marshall Breger (Catholic University of America), Sherman Cohn (Georgetown Law Centre), Bernard Jackson (Liverpool Hope University), Anatoly Kleymenov (Moscow Bar), Thomas Kuttner (University of Windsor), Yosef Rivlin (Bar-Ilan University)

21.30-22.30 Reception hosted by Deborah Charles Publications marking the publication programme of the Agunah Research Unit (President's Room, Woolsey Hall)

Wednesday 1st August

7.30-8.15 Breakfast (President's Room, Woolsey Hall)

8.30-10.00 Session 8

8A: Jewish and American Law I, Law School Room 129

Chair: Mark Goldfeder (Emory University)

Samuel Flaks (New York) – Law, Religion, and Pluralism: The Thought and Experiences of Nathan Isaacs (1886-1941)

Michael Helfand (Pepperdine University School of Law) – Church Autonomy versus Religious Arbitration: Two Models of Legal Pluralism

8B: Civil Law, Law School Room 128

Chair: Elliot Dorff (American Jewish University)

Aaron Orenstein (Zefat Academic College) – Selling an Asset in the Process of Liquidation: Considerations of Time and Space

Ram Rivlin (Tel Aviv University) – The Death and Afterlife of Modern Jewish Divorce Law

10.00-10.30 **Coffee Break**, Law School Room 124

10.30-12.00 **Session 9**

9A: Jewish and American Law II, Law School Room 129

Chair: Sherman Cohn (Georgetown Law Centre)

Elliot Dorff (American Jewish University) and Marc Gary (Jewish Theological Seminary) – Donations of Ill-Gotten Gain in Jewish and American Law

Donna Litman (Nova Southeastern University) – Rules of Statutory Construction for Biblical and American Laws: A Comparative Analysis

9B: Jewish Law and Women's Rights, Law School Room 128

Chair: Aaron Panken (Hebrew Union College, New York)

Neil Cogan (Whittier Law Center) – Women's Rights and Jewish Law in the Public Sphere of a Jewish and Democratic State

Avishalom Westreich (Academic Center of Law and Business) – A Newborn Halakhic Institution: Civil Marriage in Jewish Law

12.00-13.30 **Lunch** (President's Room, Woolsey Hall)

13.30-15.00 **Session 10**

10A: The Role of Ethics in Jewish Law, Law School Room 128

Chair: Martin Golding (Duke University)

Chaim Saiman (Villanova Law School) – Talmudic Analytics and Ethical Thought: A study of Jewish law of the Worker's Wages as an argument for Neo-Lamdanut

Daniel Sinclair (Striks CMAS Law School and Fordham University) – The Moral Image of Jewish Law as a Factor in Halakhic Decisions

10B: Health Issues, Law School Room 129

Chair: Amos Israel-Vleeschhouwer (IDC Herzliya)

Steven Friedell (Rutgers School of Law) – The Recent Transformation of Medical Liability in Jewish Law

Amit Gvaryahu (Hebrew University of Jerusalem) – Assault and Papyri: Tannaitic Discussion of Bodily Damages in their Hellenistic Setting

15.00-15.15 **Coffee Break**, Law School Room 124

15.15-16.45 **Session 11**

11A: Jews and Jewish Law in the Ottoman Empire, Law School Room 129

Chair: Shoshana Razel Gordon Guedalia (Harvard Divinity School)

Ruth Lamdan (Tel Aviv University) – Jewish Encounters in Muslim Courts in the Ottoman Empire: 16th-17th Centuries

Leah Bornstein-Makovetsky (Ariel University Center) – Punishment for Adultery in the Jewish Society in the Ottoman Empire

11B: Halakhic History and Methodology I, Law School Room 127

Chair: Chaim Saiman (Villanova Law School)

Leib Moscovitz (Bar-Ilan University) – "Peshat-Based Conceptualization": Some Observations on the Halakhic-Exegetical Methodology of R. Isaac Ze'ev Soloveitchik

Yaakov Elman (Yeshiva University) – The Grodno School

11C: Halakhic History and Methodology II, Law School Room 128

Chair: Bernard Jackson (Liverpool Hope University)

Itay Lipschutz (Academic Center of Law and Business) – Decision by Majority v. Deciding Unanimously

Ariel Abel (University of London) – Certainty in Halacha: the Relationship between Reality and Halachic Logic

16.45-17.00 **Coffee Break**, Law School Room 124

17.00-18.30 **Session 12**

12A: Non-Standard Approaches to Halakhah, Law School Room 128

Chair: Elisha Ancselovits (Yeshivat Maale Gilboa)

Avinoam Rosenak (Hebrew University in Jerusalem) – *Torat Ha-Melekh*: Pseudo-Formalistic Halakhacization in a Time of Ideological Crisis (in Hebrew, English text in conference booklet)

Omer Michaelis (Tel Aviv University) – Hasidic Moods: The Affective Grounds of Halakha

12B: Torts Law in Comparative Context, Law School Room 127*Chair*: Avishalom Westreich

Yuval Sinai (Netanya Academic College) – Calabresi and Maimonides: Is It Possible to Conduct a Dialogue Between the Tort Theories of the Two?

Benjamin Shmueli (Bar-Ilan University) – A Preliminary Sketch of a Modern Model of Differential Pluralistic Tort Liability based on the Theories of Maimonides and Calabresi

Brief Response by Guido Calabresi

18.30-20.00 **Dinner** (President's Room, Woolsey Hall)

20.00-21.30 **Session 13 Plenary Session in Honour of Bernard Jackson**

13: The Jurisprudence of Bernard Jackson, Law School Room 127

Chair: Yosef Rivlin (Bar-Ilan University)

Nechama Hadari (Oxford Centre for Hebrew and Jewish Studies) – Telling a good story: an exploration of the role of narrative in Jewish Law

Ari Marcelo Solon (University of São Paulo Law School) – Bernard Jackson's Philosophy of Jewish Law

21.30-22.30 **JLA Business Meeting**, Law School Room 127

Thursday 2nd August

7.30-8.15 **Breakfast** (President's Room, Woolsey Hall)

8.30-10.00 **Session 14**

14A: Family Law from the Talmudic to the Modern Period, Law School Room 128

Chair: Tamar Salmon-Mack (Ariel University Center)

Yaakov (Kobi) Shapira (Hebrew University of Jerusalem) – The Couple's Place of Residence – Society, Religion, and Halakha

Eve Krakowski (Yale University) – A bayt of one's own: Adjudicating wives' residence rights in medieval Near Eastern Jewish society

14B: Rabbinic Courts in Israel, Law School Room 129

Chair: Steven Fraade (Yale University)

Yosi Sharabi (Bar-Ilan University) – Rabbinical Courts' Administration in an Oppositional Social and Juridical Environment — Three Approaches

Yaron Silverstein (Zefat Academic College) – Between 'Halacha without Borders' and 'Borders without Halacha': Aspects of Private International Law in the rabbinical courts

10.00-10.30 **Coffee Break**, Law School Room 124

10.30-12.00 **Session 15**

15A: Dialogue between Jewish and non-Jewish Courts, Law School Room 128

Chair: Thomas Kuttner (University of Windsor)

Phillip Ackerman-Lieberman (Vanderbilt University) – "Arabic" (Muslim) Documents in the Jewish Courts of Medieval Egypt

Larry Rabinovich (New York) – Arkaot in the Responsa Literature

15B: Ethical Issues in Situations of Conflict, Law School Room 129

Chair: Daniel Sinclair (Striks CMAS Law School and Fordham University)

Steven Resnicoff (DePaul University College of Law) – May One Kill Some Innocents to Save the Rest?

Mark Goldfeder (Emory University) – Defining and Defending Borders: Just and Legal Wars in Jewish Thought and Practice

12.00-13.30 **Lunch** (President's Room, Woolsey Hall)

Publications of the Agunah Research Unit

The publication programme work of the Agunah Research Unit of the University of Manchester (2004-2009, http://manchesterjewishstudies.squarespace.com/agunah-research-unit/) is now complete.

The 24 Working Papers of the Unit, including the Draft Final Report, Launch Lecture and Summary Report, remain available on the Unit's web site and are downloadable from http://manchesterjewishstudies.squarespace.com/publications/

Six print volumes, including one in Hebrew, have now been published, **and will be displayed at the Tuesday evening ARU Reception at the conferenc**e. They comprise the final collective report, drafted by Bernard Jackson in consultation with the other four Unit members, an individual volume by each of these Unit members and a Hebrew version of the Summary report (previously available only in English).

1. Bernard S. Jackson, *Agunah: The Manchester Analysis*, Pp. x + 299, hardback, ISBN 9781906731113, £45.00

2. Rabbi Dr. Yehudah Abel, *Confronting 'Iggun*, Pp. vii + 116, hardback, ISBN 9781906731120, £29.50

3. Shoshana Knol, *Agunah and Ideology*, Pp. x + 186, hardback, ISBN 9781906731137, £35.00

4. Avishalom Westreich, *Talmud-Based Solutions to the Problem of the Agunah*, Pp. x + 134, hardback, ISBN 978-1-906731-20-5, £29.95

5. Nechama Hadari, *The Kosher Get: A Halakhic Story of Divorce*, Pp. vi + 149, hardback, ISBN 978-1-906731-19-9, £35.00

6. Agunah Research Unit, (סיכום המחקר) עיון מנציסטר: עגונה, with *hasqamot* from R. Shear-Yashuv Cohen and R. Shlomo Daichovsky, Pp. viii + 95 (hardback: ISBN 978-1-906731-22-9, £20.00; paperback: ISBN 978-1-906731-21-2, £15.00)

For further details, see the pages linked to http://www.legaltheory.demon.co.uk/ARU.htm), with downloadable extracts from each of the books.

The six volume set is priced at £150 (£130 without the Hebrew Summary volume). Paid up-members of The Jewish Law Association may purchase individual volumes at 25% discount

These prices include an *estimate* of overseas postage, and will vary slightly according to your location. Please send your order in an e-mail to dcp@legaltheory.demon.co.uk. You will then receive an accurate invoice and payment instructions via Paypal, and you can pay either from your Paypal account (if you have one) or by normal credit card (on the secure Paypal site). The order will be forwarded to the UK printer as soon as Paypal confirms your payment. The book(s) will be dispatched from the printer within 10 working days. Add at least one week for delivery outside the UK.

Deborah Charles Publications
173 Mather Avenue, Liverpool L18 6JZ, UK
www.deborahcharles.co.uk

SHORT BIOGRAPHIES AND ABSTRACTS

Ariel Abel

Ariel Abel (University of London) – Certainty in Halacha: the relationship between reality and halachic logic (Session 11C)

What happens when Halachic logic is challenged by non-Halachic reality? Does Halacha give way to other sources of data? Will it defer to universally acknowledged concepts? The lecture will take as its point of departure the Talmud's statement that the four cubits of Halacha are all that matter to G-d and then investigate what this can mean. We will then explore the concept of *yedia'h berurah* – clear and certain knowledge in the case of permitting commercially produced milk to the observer of kashrut. We will then go on to examine halachic aspects of the International Date Line, and the impact of drawing it in different places upon Jews observant of mitzvot. Is Shabbat therefore determined by a halachic calculation, or a decision made by a (secular) government? And finally, what is the status of a practice dependent on a scientific observation by the Talmudic Sages – such as Bircat HaHamah (blessing over the Sun at intervals of 26 years) and should we revisit the concept of KaZeh R'eh WeQadesh – or indeed adopt modern scientific calculations - to achieve accuracy in observance of the Hebrew Calendar? A handout to accompany the lecture with the relevant texts in both the original Hebrew and full translation will be provided to participants.

Rabbi Ariel Abel has served as rabbi of three important Orthodox Jewish communities over a thirteen year period. He has lectured at Oxford, Hope and Liverpool universities in Judaism and Ethics and was Director of the Montefiore College Semicha Programme in London. Today Rabbi Abel is an independent Business and Education Consultant. Among his clients are the Global Travel Movement, Blackburn Cathedral and Blackburn College. He is a student of law on the University of London External LLB programme, and already holds a BA Hons in Semitics and Languages and a Masters (MSc) in Education from leading universities. <rabbiabel@gmail.com>

Phillip Ackerman-Lieberman

Phillip Ackerman-Lieberman (Vanderbilt University) – "Arabic" (Muslim) Documents in the Jewish Courts of Medieval Egypt (Session 14A)

The documents of the Cairo Geniza are an invaluable source for the study of legal history in medieval Egypt. The Geniza contains a plethora of court records, which occasionally allude to "Arabic documents" admitted into the Jewish court. What role did these documents play in the decisions of the Jewish court? This paper will survey the court records of the Geniza in order to explore the relationship between Jewish and Islamic courts in medieval Egypt, revealing the court to have been a focal point of intercommunal relations in the 10th-13th centuries. As the long-understood legal tolerance of the Fatimid period gave way to more restrictive policies in the late 12th century, Jewish courts which long recognized documents composed in Muslim courts and which even composed their own documents in a manner that might have allowed them to be read into evidence in Muslim courts will be seen as attempting to limit dhimmi use of Muslim courts and to arrogate to themselves alone the power to adjudicate matters of interest to the Jewish community. The paper will bring evidence of forum shopping between Muslim and dhimmi courts, and it will trace the historical trajectory of intercommunal legal culture in medieval Egypt.

Phil Lieberman is Assistant Professor of Jewish Studies and Law, and affiliated Assistant Professor of Islamic Studies and History, at Vanderbilt University. His research focuses on the economic, social, and legal history of the Jews of the medieval Islamic world. A section editor of the *Encyclopedia of Jews in the Islamic World* (Brill, 2010), his own book *The Business of Identity* is forthcoming in 2013 from Stanford University Press. <phillip.i.ackerman-lieberman@Vanderbilt.Edu>

Elisha Ancselovits

Elisha Ancselovits (Yeshivat Maale Gilboa), Beyond Deductive Dialectics: Rereading the Stama as Refracting Tannaitic Narrative Typifications (Session 5A)

This paper presents a new paradigm for the seemingly poor argumentation in Stamaitic passages of different periods and schools – for the seemingly illusory logic, grammatically inconsistent Biblical exegesis, false problems, and false solutions. This paper resolves the problem by showing that the Stamaitic project did not strive to develop logical arguments or reach deductive truths. Rather, it strove to refract the story underlying each Tannaitic law and its questions and statements are often restricted-code expressions of the multiple angles of a Tannaitic ruling.

This paper discusses Shabbat 99a in which an Amoraic editor discusses liability for spitting and urinating on Shabbat as a forms of the work of transporting (in spite of the lack of required characteristics), raises problems with such categorization, and provide answers that do not address the problems. It discusses part of the Saboraic first sugya of Bava Mezia, which both presents legal implications from the Mishna that it retains even as it undercuts their girding and presents false solutions to the problem of false oaths. Last: we discuss a combined Amoraic-Saboraic passage, Kiddushin 29a-b, that begins with the false problem of interpreting what the mishna means even as the sugya immediately explains the mishna according to its original intent and continues with repeatedly inconsistent Biblical exegesis.

Elisha Ancselovits teaches Halakha be-Iyyun, Interdisciplinary Critical Halakha, and Halakhah as Practical Philosophy to the kollels and general student bodies of the Pardes Institute of Jewish Studies and Yeshivat Maale Gilboa. He is a researcher at Hebrew University's Institute of Jewish Law, a fellow of the TAG Institute for Jewish Social Values, and has recently begun guest lecturing at various academic institutions. In addition to teaching Halakha, Rabbi Ancselovits (Yadin Yadin), PhD, has also taught critical Bible Studies, critical Talmud and Midrash, and Medieval through Modern Jewish European Thought at additional Orthodox and secular Israeli institutions. <elishasimche@gmail.com>

Michael Baris

Michael Baris (Sha'arei Misphat Law College) – Models of Creativity, Restraints of Humility: Secular Legislation through the Prism of Jewish Law (Session 3B)

Research in Jewish Law has provided five primary conceptual models through which Jewish Law can possibly assimilate secular legislation, with the immediate application being Halachic recognition of secular Israeli legislation. These can be further divided into three distinct classes. One set of conceptual models is based on classic structures of authority, such as kings, either Israelite or Gentile, and finds precedent in Halachic acceptance of royal prerogative to deviate from Halachic norms in legislation and in administering justice. Quasi-structures of authority, such as field-tribunals substituting for knowledgeable courts, and by-laws enacted at the communal level, or even by professional guilds, are also recognized by Halacha. At the grass-roots level, custom creates norms sanctioned, but not envisioned, by Halachic authority. It would be appropriate to include analysis of such infra-Halachic models as the power of courts and prophets to deviate from law in cases of exigency.

Yet the application of each of these models in the context of secular Israeli legislation is prone to attack, as the literature shows explicitly. The pro-con debate can take place on different levels, grappling with the legalistic aspects of each rule and exception or transferring the issue to the political arena. Instead, I expose the conceptual underpinnings of the debate by pointing the themes common to the various modes and those common to the detractors. In essence, the issue hinges on the place that human creativity occupies in God's world, where paradoxically the greater the filial dependence on Divine Law, the greater independence the Law grants; the looser the attachment, the shorter the leash. Practically speaking, the question has not a merely yes/no answer of validity, but rather searches for the qualitative depths of legitimacy, cumulatively affecting law, society and the individual.

Michael Baris, LLB, LLM, PhD is a lecturer in Jewish Law, Philosophy of Law, and Jurisprudence at Sha'arei Misphat Law College, Hod Hasharon, and at Bar Ilan University, Ramat Gan, both in Israel. Dr. Baris's fields of interest lie in Law and Jewish Law, Philosophy and Jewish Philosophy, and their interplay. Formerly an instructor at Rabbinical Colleges for Higher Learning (Yeshivoth), Rabbi Dr. Baris brings his Talmudic and Halachic training into play while examining their theoretical underpinnings. Recently published is his article "Limited Knowledge, Unlimited Love: A Maimonidean Paradox", in Vol. 3 of the University of Toronto Journal of Jewish Thought (2012). Forthcoming publications include: "The

Metaphysics of Divorce: A Halachic-Philosophical Analysis of the Get" (Heb), forthcoming in Amadot: Marriage and Family in the Eye of the Storm, Orot Teacher's College, Elkana, Israel; "Norms of Doubt: A Maimonidean Perspective on the Threshold of Doubt", forthcoming in Jewish Law Association Studies XXV – the Netanya Conference Volume, and "Maimonides on Testimony in Agunah and Divorce: Epistemic Implications", forthcoming in Jewish Law Association Studies XXIII – the Fordham Conference Volume. <micbaris@bezeqint.net>

Ira Bedzow (Session 2)

My research agenda is to use a juridical approach to the study of traditional Judaism. This approach uses the institution of Jewish law as a data set which allows one to discover objective, social meaning embedded within the law. The methodology assumes that adherence to the law plays a significant role in the formation of ideas; therefore, its study can reveal theological and philosophical premises of the law observer's worldview. My dissertation examines the question of whether there can be a relationship between Jewish law and Jewish ethics that does not undermine either side nor conflate the two, and what that relationship would look like. The dissertation topic is part of my broader research interest which examines the relationship between Jewish law and other philosophical areas as well, such as metaphysics and epistemology.

Ira Bedzow is an ordained rabbi, a PhD candidate from Emory University, the project director for Moral Education Research run by the Tag Institute, and is the author of *Halakhic Man, Authentic Jew: Modern Expressions of Orthodox Thought*, a comparative study of Rabbis Soloveitchik and Berkovits, and *Things Overheard in the Synagogue*, a collection of poetry. He holds Master's Degrees from University of Chicago and from Touro College. His dissertation examines the question of whether there can be a relationship between Jewish law and Jewish ethics that does not undermine either side nor conflate the two, and what that relationship would look like. The dissertation topic is part of his broader research interest which examines the relationship between Jewish law and other philosophical areas as well, such as metaphysics and epistemology.

Yitzhak Ben David (Session 2)

My research consists of a textual, conceptual, legal-theoretical analysis of Tractate Horayoth in the Mishnah, Tosefta and both Talmuds. My goal is to examine the exegetical processes performed by *Hazal* in relation to situations of erroneous court rulings, and to analyze the trend of these exegetical processes against the backdrop of an understanding and analysis of historical processes which took place in the sages' reality during this period from an institutional perspective. In a broader sense, I would like to confront the perspectives of various law theoreticians with the Authority model fashioned by Tractate Horayoth, and examine which of the legal theoretical models created by modern legal theoreticians, beginning from the 18th century, better explains Halakha's legal theory, as rises from the Talmudic discussions of Tractate Horayoth. Additionally, I wish to analyze the relationship between Tractate Horayoth's method of dealing with situations of error and legal principles which are relevant in modern times (judicial review, freedom of speech [in its political sense] and civil disobedience).

Yitzhak Ben David is a graduate of Yeshivat Har Etzion, and was ordained as a Rabbi by the Israeli Chief Rabbinate. He has taught Talmud and Jewish Thought at Midreshet Ein Hanatziv and at Yeshivat Maale Gilboa, and has served as head of the Beit Midrash for Midreshet Ein Hanatziv alumnae. He holds a Master's degree in Philosophy and Talmud from Hebrew University. Currently, he is a doctoral student at Bar Ilan University Law School. His research is focused on the analysis of exegetical processes and changes during the Rabbinic period, while attempting to expose and analyze the relationship between these processes and the social, historical development within the life circumstances of Jewish society during this period.

Amy Birkan

Amy Birkan (Hebrew University of Jerusalem), Autonomy in Talmudic Law and Its Limitation of the Scope of Victimhood (Session 4C)

This paper will present a general theory of Autonomy as it is exemplified through Talmudic Legislation, and explore the manner in which this doctrine narrows the parameters of victimhood in Talmudic law. The theory of Autonomy will developed through rulings in cases of Tort and Criminal law, with special attention paid to the victim's substantive duty to actively avoid being harmed by dangerous conditions created by the defendant. Rulings in cases of 'Enticement,' and 'Psycho-Emotional Distress' will be used to illuminate the conception of a *Bar Daat*, and the Talmudic notion that an individual is legally deemed Autonomous, and the sole agent responsible for her deeds.

Amy Birkan is currently finishing her Doctorate in the Department of Jewish Thought at the Hebrew University of Jerusalem. She is writing her dissertation on 'Autonomy on Talmudic Law and Its Limiting Effect on Victimhood.' Amy holds an M.A. from McGill University in Biblical Interpretation and a B.A. from Bar Ilan University in Talmud and Bible.

Leah Bornstein-Makovetsky

Leah Bornstein-Makovetsky (Ariel University Center) – Punishment for Adultery in the Jewish Society in the Ottoman Empire (Session 11A)

Dozens of sources from many Jewish communities in the Ottoman Empire, during the 16th-19th centuries, mostly Responsa, lists of Gittin, and minutes books of rabbinical courts in Istanbul deal with halakhic questions of adulterous women. Although the majority of Muslim scholars during the middle Ages agreed on the death penalty (by stoning) on adulterous Muslim women - If there were four witnesses, and ordered to enforce Islamic law in every adultery by Christian and Jewish subjects. On the other hand there were other Muslim scholars who opposed the death penalty in adultery cases by non-Muslims. They viewed that punishment for adultery is perceived as interference in matters of religion of the Jewish community.

From the 16th century onward the Ottoman Law ruled in every case of adultery by Muslim, Christians and Jewish subjects, and the penalty was one hundred lashes for every adulterous man and woman. The adulterous man had to pay also a fine and in addition was banned for a year. Sometimes the guilty man and woman were also expelled from the city by the Ottoman ruler of the region. This ruler (Pasha,Vali) sometimes held them in prison until their fault was proved.

Generally Jewish society and the communal Jewish leaders actually made great efforts to hide adultery cases of Jews from the eyes of the authorities. They wanted to prevent the severe punishment which was imposed on the fornicators and hurt them physically and sometimes bring them to conversion to Islam.

It was also very important to the Jewish society to be perceived as a moral society.

One gets the impression that the Jewish society managed to keep secret the majority of cases of adultery and be content with deporting the woman from her husband. However sometimes the Jewish court of law was forced to inform the Ottoman authorities about the adultery cases, causing the offenders to be arrested. There were large communities, such as Salonica, Istanbul and Safed that occupied a special court of "Berurei Averot" that imprisoned adulterers in jail for a while, and brought the Jewish courts to arrange divorce for adulterous women.

Sometimes the Ottoman ruler ordered the Jewish husband to divorce his adulterous wife in Muslim court, and later he ordered him to divorce his wife in the Jewish court of law.

However, sometimes there were Jews who insisted to surrender the adulterous man to the Ottoman authorities, in order to cause him severe punishment.

Generally the halakhic posekim in the Ottoman Jewish communities rejected such step and only imposed fines on the offenders.

The lecture will discuss the Ottoman punishment system for adultery and its implementation in Jewish Society. It deals also with the pressure to punish adulterers according to Ottoman law, and the approaches of the Jewish deciders in that issue.

The discussion relates also to social and economic aspects of Jewish society in the Ottoman Empire during the 16th-19th century.

Leah Bornstein-Makovetsky is Associate Professor at the Israel Heritage Department, University Center of Ariel. She graduated Bar Ilan University and has taught in this institution Jewish History in the years 1971-2003. Her articles (more than 100 articles) deal with a variety of subjects related to the history of the Jews in the Ottoman Empire during the 16th-19th

centuries, especially Community life, religious and political leadership of the Jewish communities, focusing on the Rabbinate and the courts.` Jewish lobbying and diplomacy in Islamic countries following the Expulsion from Spain and in later years; The Jewish family in the Ottoman Empire; Religious conversion to Islam and Christianity among Jewish Ottoman society; ` In addition, she edited the handwritten court records of "Isur ve-Heter" from Istanbul for the years 1710-1903, which was published in 1999.. Her book about the history of the Jews of Aleppo during the years 1492-1800, will appear in this year. . She also finished the editing the Responsa "Beit Dino Shel Shmuel by R. Shmuel Laniado, who operated in the 18th century. The book comprises 421 handwritten pages and it is to be published in a scientific format accompanied by an extensive introduction. <rivmak1@walla.co.il>

Marshall Breger (Session 7)

My paper will consider the movement by more than 20 US states to outlaw sharia. It will trace the etiology of this movement, consider how it fits into the American Constitutional and statutory framework and discuss the applicability of such laws to halacha and other religious legal systems. It will serve as a case study of interaction between secular and religious legal systems. It will serve as a case study of the interaction between secular and religious legal systems

Marshall J. Breger is Professor of Law, Columbus School of Law, The Catholic University of America. Previously, he served in senior positions in the Reagan and George H.W. Bush presidencies. He was associate professor of law at Bar-Ian University Law School in 1980; Lady Davis Professor at the Hebrew University Law School in 2002 and Visiting Professor during 2007 and 2008. His latest book, *Independent Regulatory Agencies in the US and EU* (with Gary Edles) will be published by Oxford University Press in 2013.

Michael Broyde

Michael Broyde (Emory University) – Jewish Law and International Law: Halakha and the Law of Nations (Session 6C)

Proposals for international law as a more robust and comprehensive legal system – a law for all people and nations – have recurred over the last sixty years, particularly with the rise of the United Nations following World War II. Indeed, the state of Israel was established and derives secular legitimacy from the United Nations proclamation which created it. These suggestions have gained much currency in recent decades as technological advances in transportation, telecommunications and media have transformed the global economy, increasing the types of transactions available worldwide, as well as the ability of individuals to participate. Many in the legal community now contend that the effects of globalization and the diminishing role of national boundaries call for a more expansive system of international law, sometimes referred to as world law. These modern proposals argue not only that nations need obey international law, but that international law should govern the conduct of each and every transaction, even between individuals, so long as they reside in different nations.

This article will examine how Jewish law responds to international law proposals. The introduction raises non-technical Jewish concerns with the expansion of international law into areas it historically has not regulated. Then this article will examine whether treaty law provides a foundation for international law in the context of a Jewish state according to Halakha. This will be followed by a discussion of the application of commercial custom derived from international law within Halakha. Lastly this article will address how applicable the classical doctrine of *dina de-malkhuta dina* (lit. the law of the state is the law) might be to international law norms.

Michael Broyde is a professor of law at Emory University, was the founding rabbi of the Young Israel in Atlanta and is a dayan in the Beth Din of America.

Guido Calabresi (Session 12B)

Judge Calabresi was appointed United States Circuit Judge in July, 1994, and entered into duty on September 16, 1994. Prior to his appointment, he was Dean and Sterling Professor at the Yale Law School where he began teaching in 1959. He continues to serve as a member of that faculty as Sterling Professor Emeritus and Professorial Lecturer. Judge Calabresi received his B.S. degree,

summa cum laude, from Yale College in 1953, a B.A. degree with First Class Honors from Magdalen College, Oxford University, in 1955, an LL.B. degree, *magna cum laude*, in 1958 from Yale Law School, and an M.A. in Politics, Philosophy and Economics from Oxford University in 1959. A Rhodes Scholar and member of Phi Beta Kappa and Order of the Coif, Judge Calabresi served as the Note Editor of the *Yale Law Journal*, 1957-58, while graduating first in his law school class. Following graduation, Judge Calabresi clerked for Justice Hugo Black of the United States Supreme Court. He has been awarded some forty honorary degrees from universities in the United States and abroad, and is the author of four books and over a hundred articles on law and related subjects. Judge Calabresi is a member of the Connecticut Bar.

Michael Chernick (Session 3A)

Michael Chernick is Deutsch Family Professor of Jewish Jurisprudence and Social Justice at Hebrew Union College-Jewish Institute of Religion where he teaches Talmud. Prof. Chernick is the author of three books on rabbinic hermeneutics; two published in Israel in Hebrew and a third titled *A Great Voice That Did Not* Cease published by Hebrew Union College Press in 2009. He also was the editor of *Essential Papers on the Talmud* published by NYU Press. He has taught and lectured widely to academic and lay audiences in the United States and abroad, especially in Israel.

Neil Cogan

Neil Cogan (Whittier Law Center) – Women's Rights and Jewish Law in the Public Sphere of a Jewish and Democratic State (Session 9B)

In this paper, I review the literature about Jewish and democratic conceptions of the public sphere, and I contend that both recognize a public sphere in which women's dignity is valued. I review as well decisions of Israel's High Court of Justice. I contend that the Court has developed a vigorous jurisprudence of equality -- not explicit in the Basic Laws -- that protects women from most forms of discrimination in the public sphere. But the Court has not developed, I contend, an equally vigorous jurisprudence of dignity – explicit in the Basic Laws – that protects women's dignity in the public sphere.

I argue that women's performances in the public sphere are critical to their dignity and participation in democratic society and their full roles in economic, educational, political and social spheres. Making no comment about other traditions, I argue that their performances in the public sphere are critical as well for women's roles in Jewish tradition, across denominations and groups. In the paper, I review recent events in Israel – e.g., gender-segregated buses, the Dr. Chana Maayan awards ceremony, the Naama Margolese street assault and other violence in Beit Shemesh – and the Court's important decisions, such as *Shakdiel* (1988), *Nevo* (1990), *Israel Women's Network*, (1994), *Miller* (1995), and *Noar KeHalacha* (2009).

Neil H. Cogan has been on the Whittier College law faculty since 2001. He holds an L.L.B. and B.A. from the University of Pennsylvania and a diploma from Gratz College, and is a Ph.D. candidate in history at the University of California at Irvine. His dissertation in progress is a gender study of Jewish elites and organizations in *fin de siècle* America. He was Dean of the Whittier Law School and Vice President for Legal Education for the College from 2001 to 2009. During his deanship, the Law School established the Center for International and Comparative Law, three institutes, and six Summer Study Abroad Programs, including the Israel Summer and Winter Study Abroad Program at Bar Ilan, which he directs. Professor Cogan taught at Quinnipiac University School of Law, where he was founding dean; Southern Methodist School of Law, where he was Associate Dean for Academic Affairs; and Bar Ilan University Faculty of Law, where he was visiting professor. He was a Visiting Scholar at Yale Law School, a Visiting Scholar-in-Residence at Hebrew University Faculty of Law, a Visiting Scholar-in-Residence at the United States Department of Justice, Division of Civil Rights, and a Visiting Lecturer at Touro Law School. Earlier in his career, he was a litigator at Paul, Weiss, Rifkind, Wharton & Garrison NYC. As a sole practitioner in Texas, he was trial counsel in four of the earliest lawsuits challenging sex discrimination by major law firms in Dallas, Texas. He is the editor of several books, including the forthcoming *Freedoms and Rights in Israel: Law, Democracy and Culture*, a course book to be published by Carolina Academic Press. He was formerly on the Board of Trustees of the Jewish Publication Society. <ncogan@law.whittier.edu>

Sherman Cohn (Session 7)

Sherman L. Cohn, B.S.F.S., J.D., LL.M. Professor of Law, Georgetown University, since 1965. Previously, attorney in Civil Division, U.S. Department of Justice, and law clerk to Judge Charles Fahy on the United States Court of Appeals for the District of Columbia. Subjects currently taught include Jewish Law; Civil Procedure; Professional Ethics; Legal Issues of Alternative, Complementary & Integrative Medicine; subjects previously taught include Constitutional Law; Conflicts of Law; Equitable Remedies; Jurisprudence; Philosophy of Law; Appellate Litigation. Positions held: Chair, Executive Committee, Jewish Law Association; President, American Inns of Court; Chair, Accreditation Commission for Acupuncture & Oriental Medicine; Chair, Jewish Law Section, Civil Procedure Section, Professional Responsibility Section, American Ass'n of Law Schools. Currently, Chair of Board of Trustees, Tai Sophia Institute. <cohn@law.georgetown.edu>

Elliot Dorff

Elliot Dorff (American Jewish University) Marc Gary (Jewish Theological Seminary) – Donations of Ill-Gotten Gain in Jewish and American Law (Session 8A)

When a non-profit organization receives money and uses it to build a building, attaching the donor's name to it, and then the donor is convicted for stock fraud, what does Jewish law say about the following:
1) May or should the nonprofit agency remove his name or that of his family from the facility that they donated?
2) Must the nonprofit agency use money it has raised from other sources to return the donation to the donor if it has already been used to build the building in his name?
3) Must the nonprofit agency return any of the donor's money that has not yet been used?
4) May the nonprofit agency accept any further donations from the donor? From his family?

Does American law treat these questions, and if so, how? What other questions (e.g., violations of criminal law, tax implications, the nonprofit status of the agency; bankruptcy law considerations) does American law raise? What in the underlying ideologies of the two legal systems leads them to approach some questions differently and to ask some different questions?

Elliot N. Dorff, Rabbi (Jewish Theological Seminary, 1970), Ph.D.(Columbia, 1971) is Rector and Distinguished Service Professor of Philosophy at American Jewish University and Visiting Professor at UCLA School of Law. He was awarded four honorary doctoral degrees and the *Journal of Law and Religion*'s Lifetime Achievement Award. In addition to books on theology and on medical, social, and personal ethics, his books on Jewish law include *A Living Tree: The Roots and Growth of Jewish Law* (with Arthur Rosett, 1988); *The Unfolding Tradition: Philosophies of Jewish Law* (second, revised edition, 2011); and *For the Love of God and People: A Philosophy of Jewish Law* (2007). <edorff@ajula.edu>

Moshe Drori

Moshe Drori (Hebrew University of Jerusalem), First Born Son or Stepchild: How the Secular Legal System of Israel Views the Jewish Rabbinical Courts (Session 4A)

This paper will analyze the role of the Rabbinical Courts in the Israeli legal system and present three models that will help understand its jurisdiction. The **first** model sees the Rabbinical Courts as a general Jewish Court. Since the British Mandate, Rabbinical Courts continued to sit in arbitration over civil matters (with the consent of both parties), even after the founding of the State of Israel. However, two recent decisions of the Israeli Supreme Court have changed the picture; the Rabbinical Courts are now barred from dealing with civil matters (except for marriage and divorce), even if the parties agree to litigate before them in the context of arbitration. The **second** model – a Jewish family court – was challenged by the Israeli Supreme Court, which has viewed the secular family court (an undivided part of the general court system) as *the* court in family matters, while the Rabbinical Courts were considered to be "stepchildren," their jurisdiction confined to a very strict and narrow list of issues. From the perspective of the **third** model – namely, a court empowered solely to dissolve the marital bond – the picture is quite different. The Knesset and the Supreme Court, together, have strengthened the Rabbinical Courts, broadening their jurisdiction over the enforcement and dissolution of Jewish marriages.

Moshe Yair Drori was born in Jerusalem in 1949. He received his LLB and LLM in 1970 and 1975 respectively, both with honors, from the Faculty of Law at the Hebrew University. In 1973, he was admitted to the Israel Bar Association, and maintained a law practice until 2001, when he was appointed as a Judge in the Jerusalem District Court. A research fellow at the Institute of Jewish Law, the Hebrew University from 1969-1983, he was the Editorial Secretary of the first ten volumes (1974-1983) of the *Shnaton Hamishpat Haivri* (Annual of Jewish Law). Since 1976 he has served in various teaching capacities at the Hebrew University, and was appointed visiting professor by the Hebrew University in 2005. Judge Drori has published three monographs and 60 articles in Jewish law, family law, and international law.

Yaakov Elman

Yaakov Elman (Yeshiva University) – The Grodno School (Session 11B)

Traditional "learning" enjoyed a golden age with the ascent of the Brisker "Analytic" School in the 1880s until the outbreak of World War II. R. Shimon Shkop (1860-1939) stands out as one of the most creative intellects of the R. Haym's younger contemporaries (though not strictly a disciple), and his work was continued by two of his disciples, R. Israel Zev Gustman (1908-1991) and R. Shmuel Rozowski (1913-1979), who actually studied together in R. Shkop's yeshiva in Grodno. These three roshei yeshiva may collectively be considered as members of the "Grodno school."

One of the hallmarks of R. Shkop's approach to Halakhah is his emphasis on the place of human reason in determining both society and halakhic norms. Here I wish to examine the view of the Grodno school of the place of that a neighboring human characteristic—emotion. In particular, the focus of my attention will be *Shiur* 16 of R. Gutsman's *Quntresei Shiurim* on Bava Metzia and Chapter 2, *siman* 1 of *Shiurei Rabbi Shmuel Rozowski* on Bava Metzia as well. For R. Shkop there is of course his classic *Sha'arei Yosher* but also his *hiddushim* on both B.Q. and B.M. –all of which display a range of reactions to the classic eighteenth-century work of the *Qetzot ha-Hoshen* and the *Netivot ha-Mishpat* to the question of whether the emotion of *ye'ush*—variously rendered as "abandonment," "renunciation," or simply "despair"—can trigger a change of ownership, or whether it merely sets the stage for one by neutralizing the rights of the previous owner; thus, the owner who has lost possession only loses ownership when the finder, robber or thief actually acquires possession. Despite the fact that this approach to ownership surfaces in rather late rabbinic texts, the issue was already debated in Roman law, and a good argument can be made for finding its expression in the Bavli itself. The Grodno school offers a range of analyses, depending on whether objective or subjective factors are considered more important, with R. Gutsman arguing for the primacy of objective ones, and R. Rozowski for the primacy of the emotional factor. The debate thus also centers on whether and to what extent we must accept the *Qetzot-Netivot* position, and how we must relate the sugyot at B.Q. 66a-b and B.M. 20b-22b.

Yaakov Elman is Professor of Judaic Studies at Yeshiva University and an associate of the Harvard Center for Jewish Studies.

Samuel Flaks

Samuel Flaks (New York) – Law, Religion, and Pluralism: The Thought and Experiences of Nathan Isaacs (1886-1941) (Session 8A)

Nathan Isaacs was a professor of Business Law at Harvard who publicly embraced his Jewish identity at a time when that was rare at American universities. Isaacs' academic work was organically bound to his multi-faceted activities in the American Jewish community. He endorsed a pluralist vision of America in which ethnic groups would retain their cultural identities while contributing to the American mosaic. Isaacs encouraged fuller observance of Jewish law and he also urged that Jewish law should adapt to changes in society. He believed that Zionism presented the opportunity to apply the principles of Jewish law to the industry and commerce of a modern state. Thus, he protested the classical Jewish Reform movement's rejection of the authority of Jewish law and Zionism. Isaacs' unique background and analysis of the history of Jewish law enabled him to craft a theory of legal development that suggested that legal systems advance in a cycle of successive periods of codification, literalistic interpretation, legal fictions, principle based interpretation, followed by legislation and re-codification. Isaacs believed that these modes of legal thinking also affected the substantive evolution of the law. Isaacs cultivated his cycle theory under the influences of Hegel, the

Historical School of Jurisprudence, and the reaction against formalism in American law in the early 20th Century. However, a major motivation for his work was to defend the authority of Jewish law by attempting to refute the arguments of biblical critics. Isaacs' attempt to forge a synthesis between Jewish law, Anglo-American law and society is a remarkable example of fruitful intellectual cross-fertilization.

Samuel Flaks received his undergraduate degree from the Cornell University Industrial & Labor Relations School in 2006 and graduated from Harvard Law School in 2009. During the 2009-2010 term he served as a Law Clerk for the Honorable Edwin H. Stern, formerly Presiding Justice of the Appellate Division of the New Jersey Superior Court, and he subsequently was associated with the Law Office of Stanley K. Shapiro in New York City. Mr. Flaks is now an Agency Attorney in the Legal Division of the Teachers' Retirement System of the City of New York, a local government public retirement system. <sammyflaks@gmail.com>

Steven Fraade (Session 1)

Steven Fraade teaches courses on rabbinic literature, the history of Second Temple and early rabbinic Judaism, and the Dead Sea Scrolls. He regularly offers seminars on midrashic, mishnaic, and talmudic texts, and topics in ancient Jewish history. His research interests include the history of Judaism (in its varieties) in Second Temple and early rabbinic times; biblical translation and exegesis in ancient Judaism and Christianity; the history and rhetoric of ancient Jewish law; the Dead Sea Scrolls; literary-rhetorical analysis of tannaitic and amoraic rabbinic texts; attitudes towards ascetic piety in early Judaism; and multilingualism in ancient Jewish culture. He is the author of Enosh and His Generation: Pre-Israelite Hero and History in Post-Biblical Interpretation (1984) and From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy (1991). The latter volume won the 1992 National Jewish Book Award for the Best Book of Jewish Scholarship. Steven Fraade is co-editor of Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls (2006). Most recently, he is the author of Legal Fictions: Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages (2011). He is nearing completion of Before and After Babel: Early Rabbinic Views of Language and Translation in a Multilingual Society. In 1988 Steven Fraade was the recipient of a Guggenheim Fellowship. During 1988-89 and in 1993 he was a Fellow at the Institute for Advanced Studies in Jerusalem. He is also the recipient of research grants from the National Endowment for the Humanities, the American Philosophical Society, the Lucius N. Littauer Foundation, and the Memorial Foundation for Jewish Culture. He has been elected as a Fellow of the American Academy for Jewish Research and an Honorary Member of the Academy of the Hebrew Language (Jerusalem). He is a former Chair of the Religious Studies Department and previously served as its Director of Graduate Studies and Director of Undergraduate Studies. He previously chaired the university's Language Study Committee and currently chairs its Program in Judaic Studies.

Steven Friedell

Steven Friedell (Rutgers School of Law) – The Recent Transformation of Medical Liability in Jewish Law (Session 10B)

Until the Twentieth Century halakhic sources provided that licensed doctors who erred would be liable only in a heavenly court. Modern poskim and supporters of the Mishpat Ivri movement have used a variety of techniques to bring Jewish law into line with Western norms by redefining the standard of care and the measure of damages and by imposing liability for omissions and for failure to obtain informed consent. There are substantial costs to these efforts. Older texts that retain their sanctity do not easily yield to radical reinterpretation, and one is likely to lose sight that the halakha has its own goals for it sees compensation as a means to atonement, not as an end in itself or as a means of corrective justice or deterrence. The Article considers several other means of bridging the gap between the classical sources and modern needs and finds them unsatisfactory. Drawing on an analogous problem in American law, the Article concludes that given the changes in the theory and practice of medicine, radical reinterpretation is, despite its costs, appropriate both for those who want to be governed directly by halakha and those wanting Jewish law to be a source of Israeli law.

Steven F. Friedell is a Professor of Law at Rutgers School of Law – Camden where he teaches courses in Jewish law, Admiralty, and Torts. He has a J.D. from the University of Michigan, and he did his undergraduate work at the University of Minnesota and Brandeis where he majored in Jewish studies. His research in Jewish law has focused on tort law and on the appropriate ways that halakha can be used as a source of Israeli law. <friedell@scarletmail.rutgers.edu>

Ilan Fuchs

Ilan Fuchs (University of Calgary) and Aviad Hollander (Bar-Ilan University) – Rabbi Shlomo Goren and International law: critical dialogue with concepts of sovereignty and human rights (Session 6C)

This paper is part of an ongoing research on the interaction between religion and international law. It focuses on one of the leading decisors in the second part of the 20th century: Rabbi Shlomo Goren. Rabbi Goren was one of the leading rabbinic figures in the religious Zionist community and the Chief Rabbi of the Israeli army, later he became the chief rabbi of Israel and the head of the high rabbinical court for appeals. His position gave him wide latitude to influence halachic policy and his rulings.

The paper examines an interaction with International law from the perspective of an outsider. International law is a European construct; it is a product of process beginning with the Westphalia accords that developed over time hand in hand with the modern concepts of nationalism and liberalism. Halacha is a legal system created in a different reality and for the most part with little connection and interest to development in modern political thought and law.

Rabbi Goren was in a predicament, the establishment of the state of Israel demanded a discussion with international politics and norms. For a religious Zionist that wanted to take part in the political process and to have a say in the fashioning of the Israeli state he had to draft a position vis-à-vis international law and it's underlining axioms that are connected to liberalism.

The paper examines this critical dialogue its points of agreement and points of disagreement and offer some conclusion that have a broad ramification on the relationship of halacha and western values.

Ilan Fuchs is currently a visiting professor at the University of Calgary, where he teaches a variety of courses on Jewish and Israeli law. Prior to arriving in Calgary, he was a Schusterman visiting Israeli professor at Tulane University. His research interests include gender and Judaism, the intersection of Halacha and modernity, and the role of Orthodox politics in modern democratic society. <ilan_25@hotmail.com>

Aviad Hollander wrote his Doctoral thesis in the Talmud Department at Bar-Ilan University, researching the halakhic rulings of Rabbi Shlomo Goren, the founder of the Israeli army rabbinate. He teaches courses at Bar-Ilan dealing with the conflict between Halakha and the State of Israel, in general, and the Israeli Military in particular.

Aharon Gaimani

Aharon Gaimani (Bar-Ilan University) – Levirate Marriage among Yemenite Jewry: New Documents (in Hebrew, Session 5C)

For a number of reasons, Ashkenazi communities preferred to perform the ritual of *chalitzah* rather than the ritual of *yibum*, The decree of *Rabbeinu Gershom Me'Or Hagolah*, "Our teacher Gershom the light of the exile," prohibits multiple wives, and in order to avert polygamy the decree was upheld even in cases when the ritual of *yibum* was required. Moreover, according to *Rabbeinu Tam*, a *chalitzah* is preformed in case the brother-in-law, the *"Yabbam,"* is already married. Furthermore, according to the *Tanna Abba Shaul* the commandment of *chalitzah* precedes the ritual of *yibum*, an opinion that Ashkenazi rabbis adopted. The position of Ashkenazi communities in the 13th century can be derived from the words of Asher ben Yechiel, the "Rosh": "The Halacha follows that which is written in the first section of *Bechorot*, that now the commandment of *chalitzah* is preformed first, as the opinion of *Abba Shaul*."

In the Sephardic communities and Islamic countries, the preference was opposite. That is, they would rather perform the ritual of *yibum* over the ritual of *chalitzah*, in accordance to the opinions of the Rif, also knows as Rabbi Isaac al-Fasi, and the Rambam, or, Moses Maimonides. As the Rambam writes, "It is a positive commandment of Scriptural law for a man to marry the widow of his paternal brother if he died without leaving children, as [Deuteronomy 25:5] states: "[And one of them dies] childless... her husband's brother should cohabit with her… The mitzvah of *yibbum* takes precedence over the mitzvah of *chalitzah*."

The difference in preference between the Ashkenazi and the Sephardic communities in the 14th century was noted by the Rosh when he moved from Germany to Spain, as he writes in one of his responses, "Know that in Germany and in France it is customary not to perform *yibbum*, even if both parties want to do so, as in accordance of the those great rabbis that ruled that *chalitzah* precedes *yibbum*, hence we force them to perform the ritual of *chalitzah*. In the other countries that I have passed through and in this country I have witnessed them perform *yibbum* as in accordance of the ruling of Rabbi Isaac al-Fasi, and so I have

stopped ruling or from performing the commandment of *chalitzah* or of *yibbum*."

The Jews of Yemen preformed the commandment of *yibbum* in accordance with the ruling of Maimonides, and communities especially in Southern Yemen preformed this commandment with great fervor due to the influence of *kabbalah*, whose teachings note that by observing the commandment of *yibbum,* a *tikkun* occurs to the soul of the departed brother. Professor Shelomo Dov Goitein, when he met the immigrants from Yemen in the 1930's, noted the fervor in which Yemenite Jews exhibited while performing the ritual of *yibbum*: "In the early 1930s, when it was still possible, I painstakingly made a case study of the levirate, then fully alive among the Jews of Yemen, great admirers and followers of Maimonides. I was astounded to learn to what length both partners to the levirate, the brother and the widow, went in order to fulfill a heavenly commandment."

We can learn about such fervor from the following two examples. First, we have the case of Chana Hofee, an emigrant from the county of Ebb, who recounts that in the county they were very strict in not performing the ritual of *chalitzah*, for they saw it as a bad omen. Hence, they always preformed the ritual of *yibbum*, and if the couple did not want to live together anymore then they could get a divorce. On a related note, she tells of a case where the wife of the *yabbam* (the deceased's brother) opposed him wedding the *yavama* (the deceased's wife). Following his wife's advice, he preformed the ritual of *yibbum* and then divorced her. After a few months his wife passed away, and he wanted to marry the *yavama* that he divorced. However, the *yavama* already remarried, and the *yabbam* was very sad to lose his wife and the *yavama*.

Second, we have the case of Rabbi Yakov Hacohen Adeni, who wrote to me regarding his grandfather Rabbi Chaim ben Rabbi Yosef, a citizen of Giblaa in Southern Yemen, who married his deceased brother's wife, on the advice of his mother. As a result of the *yibbum,* a daughter by the name of Miriam was born and was their only child. Later on, he married another woman and from here he beget a number of children, whom the eldest he named Shumel, after his deceased brother. The relationship between the two wives was very cordial, however the elders of his community advised him that relationship between the two wives might become an obstacle to him, and so he should divorce one of them. Du`e to the fact that his *yavama* has not given birth since their first child, and his daughter Miriam was about seven years old, he decided to divorce her. The second wife took pity upon her and asked the *yavama* that she leave her daughter with her, in order not to impede upon her chances of finding a new husband. The *yavama* heeded her advice and left the daughter with her, and eventually the *yavama* found her match and bore children.

Document Subjects

Over the years I have searched and collected various copies of documents and old certificates related to Yemenite Jewry from public sources, and from documents held by Yemenite Jews who emigrated from Yemen to Israel.

In the Lecture I will present nine documents that I have collected in recent years that deal with the subject cases of levirate marriage. The documents include five cases that deal with performing *yibbum* or *chalitzah*, as well as four cases that deal with financial issues, namely: dowry, the *yabbam*'s inheritance, the *yavama*'s inheritance and alimony, and searching for the *yabbam.* Six of the cases are inquires and responses, and all of the documents discuss cases that occurred in Yemen.

We can learn about the custom of responding perpetuated by the elders of San'a of the previous generation from the inquiry asked of Rabbi Amram Korach, who was the last head rabbi of Jewry in Yemen. It was customary to write the answer on the same page or on the back of the page that the question was asked on. In addition, after Rabbi Korach wrote his answer down, the other rabbis would sign the page at the end, and sometimes he would write the answer only after consulting with them on the matter. As one of the inquires from San'a notes: "Believe me, it delayed me for two days, because our Teacher and Rabbi Amram did not feel well. I took the question to Our Teacher and Rabbi Avraham Amrani, but he refused to answer my question, due to the fact that the authority for such things belongs to Rabbi Amram, while the others sign after him."

Yibbum or Chalitzah (1-3)

Document 1: The following incident took place in the beginning of 1945. A young orphan, by the name of Ziharh daughter of Suleiman was wedded to Salem Tanami by her mother, but refused her husband. Her Husband passed away, and she did not want to marry his brother. The matter reached the *Beit-Din* of San'a, which Rabbi Amram Korach sat as its head. It ruled that a young orphan can in fact refuse her *yabbam*, especially if she already refused her husband. In another document, Rabbi Amram Korach notes that according to the orphan she refused her husband while she was young, and now she refused the *yabbam*. He ruled that if it is found by witnesses that she refused him while young, she does not need to go through the ritual of *yibbum*; and if she is still young, she can refuse the brother, even if she had not refused the husband. Rabbi Korach beseeched Rabbi Suleiman Malachi, head of the *Beit-Din* of the community Dhamar, to inquire after the matter and judge accordingly.

Document 2: A man passed away while his wife was pregnant, and after the child was born the woman claimed that the delivery was on the eighth day of the ninth month of her pregnancy. However, the child passed away three days after birth.

According to the rulings of the Rambam and Rabbi Yosef Karo, the child cannot exempt his mother from rabbinical *chalitzah* until it is clear that he was born after a full nine months. The matter was brought before Rabbi Yehia ben Rabbi Yehia Omisi, head of the *Beit-Din* of the community Ra□a. In the response, written in the month of Sivan 1944, Rabbi Omisi ruled that the woman is exempt from *yibbum* but requires *chalitzah*, most certainly due to doubt in the case.

Document 3: The following case transpired in Adan or in Yemen in 1965. Two brothers wed a mother and her daughter. The young daughter refused her husband and married another, after which the brother who married the mother passed away childless. The case was brought before Rabbi Shlomo Yehuda Hacohen, head of the *Beit-Din* of the community Adan, and was asked if the mother needs *yibbum* or *chalitzah*. The Rabbi ruled that she needs either *yibbum* or *chalitzah*, and is not considered the living brother's mother in-law, who would be forbidden for him to marry, as her daughter refused him while she was still young and thus not considered as his divorcee. Unbeknownst to Rabbi Hacohen, Rabbi Zadok Omisi, who was a butcher (or checker) in Adan, sent this question to his father Rabbi Yehia Omisi, who already emigrated to Israel and lived in Rishon Letzion. However, Rabbi Zadok did not mention in his letter the fact that the daughter was young when she refused her husband, but did in fact write that the daughter married the brother, who later divorced her. In accordance to the situation presented to him, Rabbi Yehia Omisi responded that the mother is permitted to marry, and is not required to perform either *yibbum* or *chalitzah*, as she is the living brother's mother in-law, and hence it is forbidden for him to marry her. Rabbi Yehia Omisi sent the question to three more rabbis: Rabbi Chaim David Halevi, the Sephardic rabbi of Rishon Letzion at the time, Rabbi Shalom Yitzchak Halevi, head of the rabbis of Yemen, and Rabbi Yosef Kapach, a judge in the rabbinical *Beit-Din* of Jerusalem.

These rabbis gave the same response as Rabbi Yehia Omisi. When the answer reached Rabbi Hacohen, he sent back a letter of clarification to Rabbi Yehia Omisi through his son Rabbi Zadok. He asked, since the daughter was young when she refused her husband, does the mother require *yibbum* or *chalitzah*. Rabbi Yehia Omisi responded that the mother does, indeed, require *yibbum* or *chalitzah*, as long as the daughter refused her husband in accordance to law. Again, Rabbi Yehia Omisi forwarded the correct question to the aforementioned rabbis, and their response was similar to Rabbi Yehia Omisi's. Rabbi Kapach added that the mother must be older for the brother, and thus it is advised that he perform the ritual of *chalitzah* and not of *yibbum*. Rabbi Hacohen sent another letter to Rabbi Yehia Omisi, raising doubts on the matter which was not clear, and it is unknown if he received a response.

Capital: the yavama's rights (4-8)

Document 4: The following event took place at the beginning of 1884. A woman married Reuben and bore him sons, after which she divorced him and married Shimon. Shimon passed away without any children, the woman wed his brother Levi, under the pretext of *yibbum*. A few days after, the woman passed away, without bearing children to Levi, but leaving a number of assets. The scholars of the Great Yeshiva in San'a were asked the question as to who inherits the woman's property: her *yabbam* husband (Levi), or her sons from her first husband (Reuben)? Their answer was that her husband (Levi) inherits, an answer that eight of the scholars in the yeshiva signed. Following that, a more detailed version of the question was received by Rabbi Yehia Kapach, who was one of the scholars in the yeshiva. The question now contained an extra element, that when the woman married her second husband (Shimon) she married him on the condition that he will remove himself from her property, and will not receive any of its benefits. This condition she also set with the *yabbam*. Rabbi Yehia Kapach responded that in this scenario, the condition is not valid, and the husband does inherit. Rabbi Shalom Shaman, who served as vice principal in the Great Yeshiva in San'a, supported Rabbi Yehia Kapach's answer, and noted that all of scholars in the Yeshiva concurred.

Document 5: The following question was sent by Rabbi Nissim Rasbi, Rabbi of Rasba and head of its *Beit-Din*, to head Rabbi Amram Korach, in the 1930's or 1940's. The question involved a the case in which heirs to a deceased brother sued, in a Gentiles court, the brother who wanted to perform *yibbum*. They demanded from him their portion of the deceased brother's inheritance, for his grandmother and the *yavama*. Moreover, the father of the *yavama* demanded from the *yabbam* a dowry. In his answer, Rabbi Amram Korach ruled that the *yabbam* is not required to fund the dowry, and detailed the inheritance laws and the amount of the Ketubah according to the Torah.

Document 6: A question appeared before the *Beit-Din* of San'a: is the *yabbam* obliged to pay the dowry, and who inherits the deceased brother's inheritance? The answer given was that the *yabbam* inherits if he goes through the ritual of *yibbum*. The answer did not address the question regarding the dowry, but detailed that the amount of the Ketubah will be equal to the amount written in the first Ketubah of the deceased brother. In addition, until the performance of yibum and during the first three months after her first husband passes away, the *deceased husband's assets fund the yavama's alimony*. There is no date in the answer, but based upon the signatures it can be concluded that the issue took place in the in the 1930's or 1940's. Those who signed on the documents are: Rabbi Amram Korach, Rabbi Yosef Shaman, Rabbi Avraham Amrani, and Rabbi Moshe Yitzchak Halevi.

Document 7: The time of the certificate dates to the year 1933, but the affair mentioned in the certificate began many

years beforehand. This case concerns Salem Oatz Graphee from the community of Kaana, who died without any children. His wife, Sa'dah bat Oatz Cohen, wanted to perform the ritual of *chalitzah.* To that end*,* she showed an official document, given to her by her husband, by which her husband gave her a field in exchange for her work, and she demanded part of the inheritance as dictated by Islamic law. Such a demand was not appreciated by the deceased's brothers, for not only would she marry a stranger, she would also partake in the brothers' inheritance. The conflict between the two sides lasted for many years in Gentile courts, and took a heavy economic toll on both parties to the dispute. The Muslim judge could not find a suitable solution to end the conflict, and in 1933 turned to Rabbi Yehia ben Rabbi Yehia Omisi, head of the *Beit-Din* of the community Rada to help end the case.

Rabbi Yehia Omisi took the challenge, though previously he had tried, without success, to end the case. Both sides were brought before him, and the rabbi told them to swear before him that whatever he decides they must accept and follow. He told the *yavama* that she must choose between two possibilities: either perform the ritual of *yibbum*, inherit the deceased, allowing the new husband to inherit his deceased brother as the rightful heir in accordance to the Torah, or rather perform the ritual of *chalitzah* and relinquish the inheritance. Regarding the field given to her by her husband, Rabbi Yehia divided it into three portions. It was not clarified in the document who, besides the woman, would receive the remaining two portions, though it seems that the deceased had two brothers, and if she opted for *chalitzah*, they would receive the remaining portions. The woman chose to perform *chalitzah*. Even though the ritual of *chalitzah* was uncommon in Yemen, and Rabbi Yehia Omisi did not have any experience in the area, he still learned the required laws and performed the required rituals of *chalitzah*. With great excitement Rabbi Omisi describes the event that transpired in the Synagogue's court in the presence of many participants, including the leaders of the community.

Document 8: This document was written in Judaic-Arabic, and the final decision was written in Hebrew. The event in question took place in the community of Ra□a in 1944. Rabbi Sayid Choharee, husband of Naama Chadat, passed away, and his wife became a *yavama* before his brother Rabbi Salem Choharee. The woman demanded her Ketubah and alimony from the property of her deceased husband, in addition to a quarter of his property as written by her husband. Rabbi Yehia Omisi, head of the *Beit-Din,* decided the matter.

Locating the yabbam

Document 9: Suleiman ben David Tabib from the city Ahthyin in Balad Ans, located in the providence of Damar, passed away without any children, and his wife Luluwah bat David needed a *yabbam*. The deceased had two brothers: Machfootz, who left and whose whereabouts were unknown, and Yosef, who converted, and also left without a trace. Rabbi Yehia Greedi, head of the *Beit-Din* in Damar, turned to rabbi Yitzchak Cohen, head of the *Beit-Din* in Adan, and requested permission to use his connections to locate the missing brothers. In his response letter dated 1914, rabbi Yitzchak Cohen recounts that he attempted to search for Machfootz in the cities of Bumbai (Mumbai) and Calcutta in India, and in Jerusalem and in Egypt but did not find him (Yemenite Jews used to travel to these locals). Based upon information received from Meootzah Salem, who is from the city of the deceased, it appeared to rabbi Yitzchak Cohen that Machfootz lived in Jaffa, married a "western woman" who gave him two daughters, and passed away two years prior. This corroborates with written testimony from Yehia ben Meootzah Tzichi, who lived in a city close to the city of the deceased, and he knew the deceased and his brother Machfootz, in addition to the fact that Meootzah lived at the time in Jaffa. Furthermore, there were written testimonies from rabbi Sayid Shalom Levi, from the leaders Yemenite Jews who emigrated to Jaffa, and further testimonies from Yemenite immigrants who lived there. Regarding the brother Yosef, it turned out he was still a convert. Based upon these testimonies rabbi Yehia Greedi wrote that the woman is permitted to marry whomever she desires, and warned anyone against ruling otherwise.

Summary

The documents reviewed in this article enlighten us regarding Yemenite Jewry. From the response on the *yavama* who was a minor (document 1) to the response regarding the woman who married to a *yabbam* when she was young (document 3), we can see the phenomena of minors marrying was accepted practice in Yemen. In addition, the annulment cases mentioned in the documents and the way in which the rabbis react to them reflect another phenomenon, albeit a negative one.

The response concerning the dowry demanded by the father of the *yavama* from the *yabbam* (document 5) and the question of whether the *yabbam* has to pay the dowry (document 6) explains the tradition that Yemenite Jewry had regarding distributing the dowry before the marriage, by which the groom, his father, or his family allocate to the father of the bride the amount of money as negotiated between the two sides before the wedding.

Concerning the questions sent from the community of Rasba and other communities, whose names were not noted, to the *Beit-Din* in San'a (documents 1, 5, and 6) so that they may rule on issues that were heavily debated, shows the relationship

between the central and peripheral communities in Yemen and the authority and influence the *Beit-Din* in San'a had over the other Jewish communities in Yemen. The position of San'a's yeshiva is further clarified in document 4, as it is written: "And on this eight rabbis of the yeshiva signed," as well as, "And this is with the agreement of all yeshivas."

The appeal of the Jews to the Gentile courts—though forbidden by Torah law—is seen throughout a number of the documents. Women from the community of Rada and the surrounding area demanded their monetary rights by appealing to Muslim judges in cases they assumed that Islamic law would benefit them more than Jewish law would. Eventually, these cases were decided by the ruling of a Jewish judge (documents 7-8). Similarly, in the community of Rasba the heirs of the *yabbam* turned to Gentile courts to settle the inheritance (document 5).

The rabbis of Yemen encouraged performing the commandment of *yibbum*, for it was hard for them to see women who were Agunot. The result of this was that in certain cases the rabbis would invest great effort to relocate a missing *yabbam,* regardless if it was in Yemen or in cities where Yemenite Jews would frequent (document 9).

It should be noted that when it was necessary for the head of the *Beit-Din* of Ra□a, the second greatest community in Yemen, to perform a *chalitzah* in a specific scenario (document 7), there was no precedent to this case or evidence from the time his father was head of the *Beit-Din*, and thus he learned from *Halacha* itself how to perform the act. This highlights the fact that there was a preference to perform *yibbum* and that performing *chalitzah* was rare in Yemen.

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Marc Gary

Marc Gary (Jewish Theological Seminary) – Donations of Ill-Gotten Gain in Jewish and American Law (Session 9A): for Abstract, se Elliot Dorff, above

Marc Gary is the Executive Vice Chancellor and Chief Operating Officer of the Jewish Theological Seminary. He previously served as Executive Vice President and General Counsel of Fidelity Investments and of BellSouth Corporation. From 1990 to 1993, he was a special prosecutor in the Office of Independent Counsel. For almost twenty years, he was a litigation partner in the international law firm of Mayer Brown & Platt (now Mayer Brown LLP). He graduated with a JD degree from Georgetown University Law Center and is a long-time member of the Conservative Movement's Committee on Jewish Law and Standards. <magary@jtsa.edu>

Israel Zvi Gilat

Israel Zvi Gilat (Netanya Academic College), Confiscation of Property during Conquest: A Capricious Act? (Session 6A)

The Torah, from a doctrinal point of view, was given on Mount Sinai. with all oral rules including the power of the sages to draft the specific ordinance "*hefker beith-din hefker*", which allows a rabbinical court to declare property ownerless. Such confiscating property while ignoring the owner's consent, is not a capricious prerogative but rather reflects the sages' conception of what is right and fitting before God. Also "*dina d'malkhuta dina*", which allows Crown agents to confiscate property from one Jew and give it to another, according to the Babylonian Talmud and its commentators, is only valid if it is carried out in a fair and egalitarian manner towards all citizens.

It would seem that the *Radbaz* and the *Rashbatz* are of the opinion that confiscations due to *"kibbush mil□ama"* do not have to be fair and egalitarian, but may be capricious acts of a capricious king, either out of vengeance or greed, even if there is no obvious advantage for his subjects. Is this equivalent to the principle: "The King Can Do No Wrong"? Is this assumption only applicable during war?

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Mark Goldfeder

Mark Goldfeder (Emory University) – Defining and Defending Borders: Just and Legal Wars in Jewish Thought and Practice (Session 15B)

The renewal of Jewish sovereignty in 1948 presented Jewish tradition with fundamental questions. Absent national borders usually intrinsic to identity, the people had long ago turned inward toward their Law. The Diaspora-based rabbinic literature seemed to almost oppose the use of force; warfare in the text was marginalized, Biblical references to heroism reinterpreted as allegorical expressions of valor in the 'battles of the study hall.' Some saw the re-establishment of the state as a return to "real" Judaism, a chance to re-hinge national identity on borders instead of bookmarks. Halacha had no place on the battlefield. Others, however, felt that approaching war through the ethical prism of the sages was not only possible but imperative, if those who wish to fight God's wars are to remain above temptation, exercise restraint, and retain a purity of arms in the face of challenging dilemmas and unforgivable demands. This paper asks whether or not a modern army can define and live within the borders of Israel's longtime ideological homeland and surrogate refuge, i.e. inside her 'four cubits of Law,' even as it seeks to defend her re-established physical borders in the realities of war, and under both international pressure and international legal norms.

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Martin Golding (Session 10A)

Martin P. Golding (Ph.D. 1959, Columbia) joined the Duke faculty on September 1, 1976, as Professor of Philosophy and soon after became professor of Law. He has taught at Columbia University and John Jay College of Criminal Justice and held visiting appointments at the University of California (both Berkeley and Los Angeles), Bar-Ilan University of Israel, University of Southern California, New York University Law School and the University of Colorado. He has held fellowships from the Social Science Research Council, the National Endowment of the Humanities, the National Humanities Center, and was a Senior Fulbright Lecturer in Australia. He is the editor of The Nature of Law (1966), and Jewish Law and Legal Theory (1994), and the Blackwell Guide to the Philosophy of Law and Legal Theory (2005); and the author of Philosophy of Law (1975; Japanese trans 1985; Chinese trans 1988 ; Korean trans 1982, rev 2004; Legal Reasoning (1984), and Free Speech on Campus (2000); a collection of some of his papers, Legal Reasoning, Legal Theory and Rights appeared in 2007. He also has contributed chapters to a number of books, including various volumes of the Nomos series. He has published numerous articles in a variety of journals, including the Journal of Philosophy, Columbia Law Review, The Monist, Vanderbilt Law Review, Philosophy East and West, Cornell Law Review, Law and Contemporary Problems, Rechtstheorie, The Journal of Medicine and Philosophy and others. Many of these articles have appeared subsequently in anthologies. From 1969 to 1989 he was secretary-treasurer of the American Society for Political and Legal Philosophy.

Shoshana Guedalia (Session 11A)

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Amit Gvaryahu

Amit Gvaryahu (Hebrew University of Jerusalem)– Assault and Papyri: Tannaitic Discussion of Bodily Damages in their Hellenistic Setting (Session 10B)

The rabbinic laws of bodily damages, although the subject of intense debate and polemic, have surprisingly been neglected until recently by scholars of halakhah and of midrash. A close reading of the halakhic midrash on the biblical passages traditionally associated with the laws of bodily damages reveals that in fact there is no uniform rabbinic "position" on these laws, but in the two Tannaitic schools – of Rabbis Akiva and Ishmael – each had their own system of reading scripture through a halakhic lens and fashioning from it a coherent legal system. At a later time, the mainstream of the school of R. Akiva adopted the positions of the school of R. Ishmael. This shift is associated with the names of Rabbi Judah (bar Ila'i) and Rabbi Judah the Prince, and influenced different Tannaitic works from that school in different manners. The third stage occurred in the Mishnah which expanded the "Ishmaelian" system from assault to rape, as found in Mishnah Ketubot 4:1 and elsewhere. This paper will review these new findings and compare them with several papyrological documents already known to scholarship as well as with the Athenian idea of *hybris* and the Roman law of *iniuria*.

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Aviad Hacohen

Dr. Aviad Hacohen (Sha'arei Mishpat Law School), Interpretation According to "Intent" of a Law and "Legislative Intent": Jewish Law as compared to other Legal Systems (Session 5A)

Many legal doctrines posit that every law incorporates an "intent." This intent may be viewed as identical to the "legislative intent," i.e., the intent is an integral part of the legal norm created by the legislature, or a distinction may be made between the "intent" derived from the law itself as opposed to the "legislative intent." Even where the "legislative intent" can be readily discerned, it is not clear that it must be taken into consideration when applying the law. "Legislative intent" can arise from the *language of the law* or from the legislative *history*. At times it may be difficult or even impossible to arrive at an understanding of the legislative intent. Often tension exists between the explicit language of the law and the intent behind it, with each leading to a different legal result. The distinction between the "literal" approach and that which gives greater weight to the "intent" also reflects the tensions between the "body" of the law and its "soul", between "formal justice" and "substantive justice." The lecture will focus upon means to discern the "intent" of an amendment, i.e., "according to the language" as opposed to interpretation "according to the intent" and the tension between the "legislative intent" and the "intent of the law."

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Nechama Hadari

Nechama Hadari (Oxford Centre for Hebrew and Jewish Studies) – Telling a good story: an exploration of the role of narrative in Jewish Law (Session 13)

Israeli lawyer and activist Sharon Shenhav once challenged Professor Bernard Jackson with the claim that he has a split personality: there is a legal-theorist Bernard Jackson who applies semio-narrative theory to English criminal law and a halakhicist Bernard Jackson who has, for instance, produced the various Reports of the Agunah Research Unit – theoretically conservative works in which he treats the Halakha as... Jewish Law. When was he going to reconcile the two? The premise of this paper is that there is far too much both of interest and of value in Jackson's legal theoretical work for it to go unapplied to the field of Halakha. Fully appreciating the narrative quality of seemingly legal parts of halakhic discourse, for example, enables the Halakha to be considered not only in the context of other legal systems but also in that of other traditions of narrative ethics. This paper highlights points of congruence between Halakhic ethics, the theological narrative ethics developed in a Christian context by Stanley Hauerwas and the "feminine" ethics developed by a variety of feminist thinkers following Carol Gilligan. The comparison is explored on both the theoretical level and the applied, drawing particular examples from the field of medical ethics.

Nechama Hadari holds a PhD from the University of Manchester where she was a member of the Agunah Research Unit convened by Professor Bernard Jackson. Her BA Degree is in English and Theatre, she trained and worked as a professional concert pianist in both England and Israel and she first studied Theology at Oxford University, gaining a Distinction in the Old Testament component of a Post Graduate Diploma. Nechama is due to return to Oxford next year (with her husband and four children) as a Visiting Scholar at the Centre for Hebrew and Jewish Studies for the Advanced Jewish Studies Seminar in Contemporary Orthodoxy. <atarhadari@yahoo.co.uk>

Christine Hayes (Session 1)

Christine Hayes (1984 B.A. Harvard University, 1993 Ph.D. U.C. Berkeley) is Weis Professor of Religious Studies in Classical Judaica at Yale University. A specialist in Talmudic studies, her published works include *Between the Babylonian and Palestinian Talmuds* (Oxford University Press, 1997; recipient of the 1999 Salo Baron prize for a first book in Jewish thought and literature, awarded by the American Academy for Jewish Research), *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (Oxford University Press, 2002; a finalist for the National Jewish Book Award), and *The Emergence of Judaism* (Fortress Press, 2010). She is currently completing a book on divine law. <christine.hayes@yale.edu>

Michael Helfand

Michael Helfand (Pepperdine University School of Law) – Church Autonomy versus Religious Arbitration: Two Models of Legal Pluralism (Session 8A)

This paper considers the dynamic relationship between religious tribunals and U.S. courts as a paradigmatic instance of contemporary legal pluralism. To do so, this paper examines the disparate treatment of religious institutional decision-making under constitutional law on the one hand and under arbitration law on the other. Pursuant to the Establishment Clause of the First Amendment, courts are instructed to take a hands-off approach to the decisions of religious institutions and are thereby prohibited by the "religious question" doctrine from resolving cases where the "underlying controversy [is] over religious doctrine or practice." Thus, constitutional law advances a form of legal pluralism premised on a strong conception of deference that even, under current doctrine, prevent courts from evaluating whether the religious decision was procured by fraud, coercion or arbitrariness. By contrast, private law - through the vehicle of arbitration law - empowers courts to play a more active role in religious decision-making, authorizing the enforcement of religious arbitration decisions. Thus, instead of advancing a purely deference-based conception of legal pluralism, arbitration law relies more on incorporation, which both allows courts to enforce religious decisions on their terms and also requires courts to evaluate the process of religious decision-making for conformity with "standard conceptions of fairness."

In exploring these two versions of legal pluralism - deference and incorporation - this paper argues that the arbitration model provides a more attractive alternative both as a matter of constitutional law and public policy. While the deference model

might better track purist conceptions of legal pluralism, incorporation of religious decisions provides religious groups with more direct access to justice, capitalizing on the enforcement power of the state while simultaneously enabling the state to provide stronger procedural safeguards for religious dispute resolution.

Michael Helfand is an associate professor at Pepperdine University School of Law and association director of Pepperdine University's Diane and Guilford Glazer Institute for Jewish Studies. Professor Helfand received his J.D. from Yale Law School and his Ph.D. in Political Science from Yale University. Professor Helfand's primary research interests are law and religion, arbitration, and constitutional law, with a particular focus on religious arbitration, group rights and political theories of toleration. Professor Helfand's articles have appeared in the New York University Law Review, Boston University Law Review, George Mason Law Review, University of Pennsylvania Journal of Constitutional Law, William & Mary Bill of Rights Journal, and Journal of Law & Religion.

Marc Herman (Session 2)

Medieval rabbinic debates surrounding the origins of the Oral Torah constitute an undertreated body of literature in academic discourse. Yet, for many medieval rabbis, questions of legal epistemology were central to their conceptualization of Jewish law. Chief among these jurists were Maimonides and Nahmanides, yet they are only the best known medieval interlocutors who debated the topic of legal epistemology. Rabbinic interest in legal epistemology was widespread, motivated by both inter- and intra-religious polemic, as well as for "internal" rabbinic purposes. Previous scholarship has too often assumed stable categories of biblical and rabbinic law in the post-Talmudic world. Upon closer inspection, rabbinic debates are best understood as attempts to construct these (and other) categories. Though sometimes scattered throughout medieval rabbinic legal discourse, I hope to show that legal-epistemological discussions were crucial to how leading rabbinic jurists imagined themselves and their legal world.

Marc Herman is a fourth-year student at the University of Pennsylvania's Religious Studies Department focusing on medieval Jewish intellectual and cultural history, with a primary focus on Jews in the Islamic world. Marc graduated Brandeis University in 2005; his senior honor's thesis was entitled "Orthodoxy and Modernity: Rabbi Hayyim Hirschensohn's *Malki ba-Kodesh*," which won the award for best senior thesis in Near Eastern and Judaic Studies. Marc has been a fellow at the Cardozo Center for Jewish Law and is a current fellow of the Wexner Foundation.

Richard Hidary

Richard Hidary (Yeshiva University), Talmudic Topoi: The Hermeneutical Methods of Legal Midrash and Greco-Roman Rhetoric (Session 3b)

Scholars have long noted an affinity between midrashic exegesis and the *topoi* and hermeneutics of Greco-Roman rhetoric and law, affirming that the rabbis participated in their surrounding intellectual culture. Although the rabbis employed these exegetical rules extensively, however, we will argue in this paper that they also express a deep skepticism about their use—especially since they can threaten the authority of traditional teachings. The early sages incorporated midrashic hermeneutics in order to ground Pharisaic law in Scripture; these exegetical methods, however, quickly became a double edged sword when the Sadducees used them to attack Pharisaic views. This chapter will first review the parallels between Greco-Roman and midrashic methods of exegesis, then discuss the historical context for their adoption into the rabbinic legal system, and will finally analyze the rabbis' apprehension about their application. This will provide us with a window into the rabbinic encounter with the Greco-Roman rhetorical tradition.

Richard Hidary is an assistant professor of Judaic Studies at Yeshiva University and received a PhD from New York University. He has published, *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud* (Brown University Press, 2010), as well as articles appearing in AJS Review, Dine Israel, Encyclopedia Judaica, and other publications. An ordained rabbi, Richard is the founding director of Merkaz Moreshet Yisrael, which produces teachers guides for high school Jewish studies. Richard's next book project will analyze Talmudic dialectic and argumentation in the context of the Greco-Roman rhetorical tradition.

Amos Israel-Vleeschhouwer (Session 1)

I offer to view the interaction of Jewish and other legal systems in two, intertwined, ways. **Structural analysis**: What is the extent of interaction and overlapping between the systems and between their constituencies? What are the power relations between the systems (forced, acknowledged or accepted hierarchy and various non-hierarchical structures)? No interaction of the Jewish and another legal system can be viewed in isolation. Jewish law, players and communities interact with multiple players in a complex, multi-layered system. I will offer a model for such an analysis and propose a research paradigm based on the model. **Dynamic analysis**: The actual social and legal interactions, as well as their perception by all players should be researched as a process. Current interactions (or lack thereof) result from previous experience. As well, some interactions just occur, but other interactions are strategically created, structured and managed by various players to achieve different goals. But, as in all complex systems, all interactions have both planned and unsuspected consequences.

What are the internal processes and institutions that regulate the interactions and that are activated by them? I suggest re-examining some images that have been offered in the Jurisprudential literature: the "bridge", legal transplantation (of trees and organs), grafting, translation, dialogue and adoption. (Based on chapters 7-8 of my PhD thesis at TAU: "Attitudes of Jewish law towards international law: An analysis of Jewish legal materials and processes", supervised by Profs. Arye Edre'i and Orna Ben Naftali, 2012).

Amos Israel-Vleeschhouwer lives with his partner and four children in Jerusalem. He holds an MA in psychology and PhD in Law, both from Tel Aviv University. He researches Jewish law using legal research paradigms such as law and psychology, law and space, public choice theory and system analysis. He teaches Jewish law, law and psychology, a legal clinical course and social psychology at various institutions. He is a co-founder and volunteer at the hotline for religious male victims of sexual abuse. For publications and drafts please contact aisrael@idc.ac.il.

Bernard Jackson (Sessions 1 and 7)

Bernard Stuart Jackson, b. 1944, holds degrees from Liverpool (LL.B. Hons), Oxford (D. Phil.), Edinburgh (LL.D.) and Hebrew Union College, Cincinnati (D.H.L., *honoris causa*). He has held professorial posts at the Universities of Kent, Liverpool and Manchester (Co-Director of the Centre for Jewish Studies, 1997-2009; Director of the Agunah Research Unit, 2004-2009), and Visiting Appointments in Jerusalem, Oxford, Harvard, Paris, Bologna and Brussels. He is now (part-time) Professor of Law and Jewish Studies at Liverpool Hope University. His research interests (nine single authored books, including *Wisdom-Laws* (OUP, 2006) and *Essays on Halakhah in the New Testament* (Brill, 2008) are in the semiotics of law and the history and philosophy of Jewish law. <bsj@legaltheory.demon.co.uk> A full publications list is available at http://www.legaltheory.demon.co.uk/lib_biblioBSJ1.html

Leah Jacobsen

Leah Jacobsen (Gordon College) – The Mother's Legal Authority over Her Offsprings' Marriage in the Ancient Near East and the Bible (Session 4B)

Mesopotamian and Biblical societies in antiquity were characterized by their patriarchal nature. The family unit was led by the father whose authority enveloped many areas of life. The father had broad legal authority over the members of his household, including his offspring, his sons and his daughters, married and single. Therefore in those ancient writings, in which the patriarchal system is clearly regnant, one would expect the exclusive, or almost 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 was 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, their education, and her appearance in court on matters concerning them. In this lecture I would like to address one aspect, which is the question of mother's legal authority over her offsprings' marriage. I will 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 offsprings' marriage? And if so, what was the extent of their partnership – full or partial?

Sections in the 'Mesopotamian Law Collections' already from the second millennium BCE attest to the mother possessing

legal power with regard to her daughter's marriage, and she acts in joint partnership with the father in arranging them. We can learn about the mother`s legal power in arranging the marriage of her sons, and especially in arranging the marriage of her daughters, also from relevant legal documents from various regions and periods. These findings are significant in view of the fact that the Mesopotamian societies were patriarchal in nature.

In the Bible, there is no solid basis for asserting that the mother had legal authority in arranging her offsprings' marriage .This is especially relevant during the Israelite period, which differs from the pre-Israelite period, reflected mainly in the book of Genesis and it's Mesopotamian social-legal background.

Dr. Leah Jacobsen lives in the Kfar Vradim in the western Galilee, Israel. Her institutional affiliation is to the Bible Department in Gordon College and she also lectures Bible in Judaism Studies at Kinneret College and the Western Galilee College. Her dissertation on the subject: "Aspects of the Legal Status of the Mother in the Ancient Near East and the Bible - A Comparative Study", was carried out under the supervision of Prof. Joseph Fleishman (Zalman Shamir Bible Department) and Prof. Kathleen Abraham (Department of Hebrew and Semitic Languages), in the Bible Department at Bar-Ilan University (2011). This lecture is based on one of the chapters of my Dissertation. <ljacobs@netvision.net.il>

David Kalman (Session 2)

David Zvi Kalman is a second year graduate student in the Department of Near Eastern Languages and Civilizations at the University of Pennsylvania and a graduate fellow at the Center for Jewish Law and Contemporary Civilization at Cardozo Law School. His primary research interest is the nature of religious legal systems, as expressed in Jewish and Islamic medieval sources and modern thinkers which are reliant upon them. The projects which he is currently pursuing include an analysis of the attitude towards legal loopholes in Sunnī and Geonic texts, as well as a comparison of modern Jewish and Muslim attempts at religious legal reform. He has recently begun work on a project to understand the development of the Islamic and Jewish legal traditions as the development of many different legal institutions, each growing its own pace, according to its own logic, and with its own relationship to praxis.

Lawrence Kaplan

Lawrence Kaplan (McGill University) – On Putting Humpty-Dumpty Together Again: The Legal Philosophy of Maimonides' Introduction to the Commentary on the Mishnah as Contrasted with his Later Works (Session 6B)

From Nahmanides' day to our own, rabbis and (more recently) academic scholars have devoted great energy to studying Maimonides' legal philosophy as contained in his four major works: *Peirush ha-Mishnah* (particularly the *Hakdamah* [=HPM]), *Sefer ha-Mitzvot* (particularly the first two *Shorashim*), *Mishneh Torah* (particularly the *Hakdamah* and *Hilkhot Mamrim*, Chapters 1-4), and *Moreh Nevukhim* (particularly 1:71, 2:39, 3:34, and 3:41). Scholars, while noting slight divergences between these works, generally viewed them as consistent and consequently felt free to draw on them all to create a synthetic picture. This paper will argue that the specific differences in legal issues between *HPM* and Maimonides' other works are more numerous and significant than has heretofore been noted. More important, the specific legal positions, unique to *HPM*, are not just random and isolated, but coalesce to form a coherent, comprehensive legal theory fundamentally differing from that found in his other works. Briefly, in all his works Maimonides sharply distinguishes between the divine Law and the human law of the rabbis. However, while in his other works the authority of that human law is grounded in the institutional authority of the Great Court, in *HPM* its authority is grounded in the rational authority of the Sages.

Lawrence Kaplan is Professor of Rabbinics and Jewish Philosophy in the Department of Jewish Studies of McGill University. He was a Starr Fellow at the Center for Jewish Studies of Harvard University in 2005, and a Tikvah Fellow at the Tikvah Center for Law and Jewish Civilization of New York University Law School in 2011-2012. He has published widely in both medieval and modern Jewish thought. He has co-edited both *The Thought of Moses Maimonides* and *Rabbi Abraham Isaac Kook and Jewish Spirituality*. Perhaps he is best known for his translation from the Hebrew of Rabbi Joseph Soloveitchik's classic essay *Ish ha-Halakhah* (*Halakhic Man*).

Birgit Klein

Birgit Klein (Hochschule für Jüdische Studien, Heidelberg) – Transfer of Family Property in Early Modern Ashkenazic Jewry in Interaction with non-Jewish Legal Practice (3A)

Jewish marital and succession law is notorious for its gender asymmetry. According to the Jewish legal norm in force since antiquity, neither the widow nor the daughter is usually entitled to inherit the estate of a deceased husband or father. This paper will investigate a range of mechanisms that were developed to alleviate this legal discrimination against women, by establishing forms of (legal) protection in formal law and through customary practice. In order to achieve a higher level of equality, principles of non-Jewish legal practice were introduced into Jewish practice. The resulting legal situation was rather similar to non-Jewish practice. I will describe these developments on the basis of archival files by dealing with the following issues: 1) How were *tenaim* (marriage contracts with stipulations) applied in lawsuits before non-Jewish courts, in order to protect the dowry from the creditors' claims? 2) In which terms was the *shtar hatzi heleq zakhar* ("document of half a male's portion") presented and explained to non-Jewish courts? 3) How did non-Jewish lawyers perceive Jewish law and legal practice?

> Birgit E. Klein has held the chair "History of the Jewish People" at the Hochschule für Jüdische Studien (University of Jewish Studies) Heidelberg, Germany, since 2006. For her second German academic degree, the "Habilitation" (Professor qualification), she studied "The Jewish law of marital property and succession in the early modern times: Developments since antiquity, and impacts on the gender ratio and the relationship with the non-Jewish society" (submitted to the Freie Universität Berlin, Germany, in 2006; to be published in 2012). Her research field is Jewish religious, social, legal, and gender history since the Middle Ages.

Anatoly Kleymenov (Session 7)

Anatoly Kleymenov, b. 04.29.1968 (to a mother who is also a lawyer and father who is an historian) has been a member of the Moscow Bar since 1994. He graduated from Moscow State Academy of Law in 1993 and has worked with the law firm of "Mekler & Partners" since 1996. His main area of practice is commercial litigation. In 2011 he received the degree of Candidate of Legal Science from the Institute of State & Law, Russian Academy of Science, for a thesis entitled "The Adversarial Nature of US Civil Procedure". He takes an active part in the Jewish life of Moscow, and undertakes pro-bono work for Jews with disabilities and low income. <kleimenov@mekler.dol.ru>

Ron Kleinman

Ron S. Kleinman (Ono Academic College), The Halakhic Validity of Civil Law and Civil Adjudication in Israel: The Position of R. Israel Grossman in *Responsa Mishkenot Israel* (Session 6A)

This presentation examines the position of Rabbi Israel Grossman (1922-2007) on civil law and civil adjudication in Israel, as reflected in his halakhic work, *Responsa Mishkenot Israel*. Rabbi Grossman was an ultra-Orthodox Israeli rabbinical judge whose rulings relate primarily to the ultra-Orthodox Jewish community in Israel.

Responsa Mishkenot Israel deals with *halakhot* pertaining to condominium housing. Sales contracts of dwelling units in condominium housing projects are based on civil law, which may not be consistent with Torah law. Rabbi Grossman distinguishes between the civil law, on the one hand, and the rulings of civil courts of law which interpret the law, on the other. According to Rabbi Grossman, dwelling owners are bound by civil law by virtue of the contracts which they sign; however, the *interpretation* of the civil law must be according to principles of Torah law and not according to the rulings of civil courts. We will present a critical review of his arguments.

Another topic that is examined is the attitude of Rabbi Grossman to local "customs" that violate Israeli building laws. We suggest that Rabbi Grossman's rulings in this regard reveal his general attitude towards the State of Israel and its laws.

> Prof. Ron S. Kleinman is a full time faculty member of the Ono Academic College School of Law in Israel, where he teaches Jewish Law and Torts. He is the Chairman of the Israeli Committee of the Jewish Law Association (since 2008). His recent research includes:

- The relations between customs pertaining to monetary laws (*dinei mamonot*), *Halakha* and civil law.
- Merchant customs relating to methods of acquisition (*kinyan situmta*), e.g. the Halakhic validity of e-commerce.
- Selling *Aliyas* and honors in the synagogue: the custom and its evolution, and social and Halakhic problems that it has produced. <rkleinman@ono.ac.il>

Eve Krakowski

Eve Krakowski (Yale University) – A bayt of one's own: Adjudicating wives' residence rights in medieval Near Eastern Jewish society (Session 14A)

An early Gaonic responsum mandates that a husband whose relatives habitually mistreat his wife must either relocate her or divorce her without financial penalty (*yotsi ve-yitten ketubba*) – a novel application of rabbinic divorce law, which parallels medieval Ḥanafī legal approaches to wives' residential rights. This paper uses documents preserved in the Cairo Geniza to examine how Rabbanite courts in Fatimid and Ayyubid Egypt and Syria-Palestine upheld this prescriptive legal precept. I examine the legal instruments and protocols through which this principle was implemented, the social contexts in which it was invoked, and the social uses that it served for women and their families. I close by considering how this evidence of social practice may help us understand the origins of this legal innovation itself and its relationship to Ḥanafī legal discourse. Rather than viewing the Gaonic stance on this issue as directly or indirectly influenced by Islamic legal norms, I suggest that both literatures may reflect parallel legal accommodations of a common cultural ideology regarding women's domestic space in the marital household.

Eve Krakowski is a Blaustein Postdoctoral Associate in the Department of Judaic Studies at Yale University. Her dissertation, *Female Adolescence in the Cairo Geniza Documents*, was completed in the Department of Near Eastern Languages and Civilizations at the University of Chicago. It examines the legal, social, and cultural construction of a brief stage in the early female life course among Jewish communities in the Fatimid and Ayyubid empires.

Thomas Kuttner: Session 7

I will address the 2005 controversy over the competency of religious tribunals to make rulings in family law matters enforceable before the ordinary civil courts under the Ontario Arbitration Act. The controversy, precipitated by the proposed establishment of a Toronto-based Sharia Court for this very purpose, led ultimately to the statutory exclusion of religious courts of any denomination from the class of tribunals competent to resolve family law disputes under the Act. Family law being largely a matter falling under provincial jurisdiction, I will survey developments across Canada since that date.

Since 2010, Professor Kuttner QC has held the position of *Ron Ianni Visiting Scholar* at the University of Windsor Faculty of Law following 30 years on the Law Faculty at the University of New Brunswick. His principal research and teaching interests are in the fields of Administrative, Constitutional and Labour law. He has been active as a labour board chair, mediator and arbitrator, and in 1996 successfully argued the case of *Re Ross* before the Supreme Court of Canada, which upheld the removal of an anti-Semitic school teacher from the classroom. Professor Kuttner's pre-law graduate training was in Jewish Studies and Islamics at Toronto, Jerusalem and Chicago, and for the past ten years he has taught a seminar in *Mishpat Ivri* using the materials of Menachem Elon et al.

Ruth Lamdan

Ruth Lamdan (Tel Aviv University) – Jewish Encounters in Muslim Courts in the Ottoman Empire: 16th-17th Centuries (Session 11A)

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. In my presentation I will concentrate on the 16th and 17th centuries, when Jews of Spain flooded the Empire, settled within existing Jewish centers and formed new ones. The Jewish subjects, as other non-Muslim communities, had to respect the Ottoman law, and obviously were summoned to *shari'a* courts on criminal, financial and

other matters. Though the Jewish communities had jurisdictional autonomy on *halakhic* and internal matters, there were many cases where Jews preferred to sue their co-religionists before a local *kadi* in order to solve personal and business problems, and obviously they expected to have justice. Moreover, even community leaders – having no massive power of enforcement - did not hesitate to apply to Muslim courts on communal matters, such as misbehavior of certain individuals, tax collection, etc. Documents from the *shari'a* court in Jerusalem, as well as Responsa literature from Jewish centers in the Ottoman Empire, demonstrate the complicated situation of the Jewish subjects, and show that *kadis* were involved in commercial, marital and communal decisions.

For many years a lecturer in the Department of Jewish History, Tel Aviv University, on various subjects concerning early modern Jewish society and family life, especially in Eretz Israel and the Ottoman Empire. I am currently a Research Associate at The Goldstein-Goren Diaspora Research Center at Tel-Aviv University. My book, *A Separate People - Jewish Women in Palestine, Syria and Egypt in the 16th Century,* was published in 2000 (Brill: Leiden-Boston-Köln), and my compiled edition of *Sefer Tikkun Soferim of Rabbi Itzhak Tzabah* - a collection of Hebrew legal documents and contracts (*shetarot*) copied in Jerusalem in 1635 - was published in 2009 (Tel-Aviv University: Tel-Aviv). For more publications: lamdan1@post.tau.ac.il

Samuel Levine (Session 2)

Professor Samuel J. Levine joined Touro Law Center in 2010 as Professor of Law and Director of the Jewish Law Institute. He previously served as Professor of Law at Pepperdine University School of Law. He has published more than forty law review articles and has delivered a number of public and endowed lectures. Professor Levine received a J.D. from Fordham Law School, cum laude and Order of the Coif, and an LL.M. from Columbia Law School, with Highest Honors. He served as an Assistant District Attorney in Brooklyn, as a law clerk in the Southern District of New York, and as an adjunct professor at Fordham Law School. He has also taught at St. John's University School of Law. <slevine@tourolaw.edu>

Itay Lipschutz

Itay Lipschutz (Academic Center of Law and Business) – Decision by Majority v. Deciding Unanimously (Session 11C)

The majority rule is usually considered as most natural and is common especially within the democratic culture. This is conventional with the legislation process as well as with elections whereby we choose the legislator. Almost every process of reaching a decision relies on the majority principle which is defined in the Tora (Exodus 23, 2) "After multitude to incline". In contrast, the "unanimous" principle reflects consensus and harmony but since it is hard to reach a unanimous consent it is considered to be problematic. It is occasionally used in order to make it difficult to pass a decision or to maintain the existing situation. Inasmuch the majority rule is so basic and common deviation therefrom is very outstanding. Preferring the unanimous principle in Jewish Law raises many questions: These questions will be addressed referring to the writings of a significant "RISHONIM" in relation to deciding by compromise ("PESHARA"). I will argue that the contractual character of the process of compromise as well as its purpose constitute one of the reasons for adopting the unanimous principle. The very essence of the compromise as a deviation from the "judicial truth" may serve as an additional rationale. Furthermore, it will be suggested, contrary to the conventional thinking, that according to some sources deciding by the majority rule in the Jewish Law is not the default option but rather the exception.

Dr. Itay Lipschutz is a lecturer at the Academic Center for Law and Business. He has graduated from the Bar-Ilan University Faculty of Law where he was the Editor-in-Chief of "Mechkarey-Mishpat" Bar-Ilan University Law Journal. He received his PhD from the Bar-Ilan University after graduating from the direct PhD program for outstanding students, and wrote his thesis on "The Compromise in Jewish Law". Dr. Lipschutz's main research and teaching areas are Jewish Law, Civil Procedure and the Judicial Process. *Publications:* "Judges' Deliberation" 26 Shenaton Ha-mishpat Ha-ivri (2012); "Basing A Conviction Only on Unanimous Decision" 8 Alei Mishpat (2010); "The Meaning of P'sharah" 8 Alei Mishpat (2010); "The Talmudic Compromise – Between Mediation and Arbitrament" in Judge Uri Kitai Book (2007); "The Procedural Limits of Compromise (P'sharah)", 24 Shenaton Ha-mishpat Ha-ivri (2006); "The Place of Repentance in Retributive Sentencing" 6 International Journal of Punishment and Sentencing (Forthcoming); "Aggregation of Estimates in the Absence of a Majority" Jewish Law Annual (Forthcoming, with Dr. Mordechai Schwartz) <itay@clb.ac.il>

Donna Litman

Donna Litman (Nova Southeastern University) – Rules of Statutory Construction for Biblical and American Laws: A Comparative Analysis (Session 9A)

This paper considers the principles or middot used to interpret the Torah and compares them to American rules of statutory construction. This paper also entertains the possibility that these middot first were used to construct the law and then to construe it. The middot consider (1) application by inference, (2) meaning by analogy, (3) generalization of specifics, (4) interrelationship of general and specific language and cases, and (5) meaning by context and related provisions. With respect to Jewish and American law, this paper (a) compares the rule of kal ve-homer with judicial a fortiori inferences, (b) the rule of gezerah shevah with the modern meaning of legislative silence, (c) the rule of binyan av with judicial synthesis of case law, (d) the significance of order of language in determining meaning and the doctrine of ejusdem generis, (e) the importance of context and the rule of noscitur a sociis, and (f) harmonization of potential statutory conflicts and the doctrine of implied repeal.

Donna Litman is a Professor of Law at Nova Southeastern University, Shepard Broad Law Center in Fort Lauderdale, Florida. She has been teaching statutory construction for over 30 years in her tax and estate planning courses and for the last 10 years in her comparative law seminar on Jewish Law. Her extensive scholarship on varied topics of federal and state statutory law is cited often by other professors, judges, and attorneys. Professor Litman, a Board Certified Tax Lawyer, is included in Marquis Who's Who in the World and has an AV Preeminent rating from Martindale-Hubbell. <litmand@nsu.law.nova.edu>

Omer Michaelis

Omer Michaelis (Tel Aviv University) – Hasidic Moods: The Affective grounds of Halakha (Session 12A)

The mid-eighteenth century Podolia witnessed one of the most fascinating instances of a renewed articulation of religious discourse, emphasizing the priority of moods as the infrastructure for the constitution of the order of discourses. A focal point of the primary initiators of this movement as it developed was Dov Baer, known by his epithet The Maggid of Mezerych. In this lecture, I want to explore the fresh reshaping offered by Baer to the structure of Halakhic discourse, an offer still reverberating in *Shulkhan Arukh HaRav,* Shneur Zalman of Liadi's version of *Shulkhan Arukh*, a work commissioned by Baer himself. My primary guide in this exploration will be two homilies by Baer from his collection *Maggid Devarav le-Yaakov* [1771]. In it, I will claim, Baer argues that moods not only precede any specific form of discourse – Halakhic discourse included – but moreover, they condition it. Furthermore, because moods in themselves can never become an object for consciousness, they necessarily involve mediation via inherently expressive forms of representation embedded in a discourse. I intend to demonstrate how a careful reading of Baer can allow us to arrive at a richer understanding of the substantial relations between the philosophical foundation of Hasidism in its early stages of formation and Halakha: to reveal both their inherent tension, but also the fruitful interaction between the two.

Omer Michaelis **(b. 1981) is a postgraduate student in the department of Philosophy at Tel Aviv University. His current work is on** Early Hasidic discourse, examining the affective ground of their teachings, opening up a prism through which the unremitting presence of moods can be traced, with hope of exploring the way in which moods determine the philosophical trajectories of these masters, their relation to the world, self and others. His Master's thesis is titled "The Path to Love & Awe: Moods in Dov Baer's homiletical discourse". He is also an editorial board member at Babel Publishing House in Israel.

Yifat Monnickendam

Yifat Monnickendam, Jewish Influence on Christian Legal Terminology: The Case of Ephrem the Syrian (Session 4B)

Ephrem the Syrian (306-373 CE) is known for the numerous Jewish traditions found in his writings. This phenomenon, however, is

not limited to aggadic traditions, but also applies to halakhic ones, and is reflected in Ephrem's legal terminology as well as his legal thought and practice. Comparing Ephrem's legal terminology in issues of betrothal, marriage, adultery, and divorce with that used in contemporary and earlier Jewish, Christian, and Roman sources, reveals the deep influence of rabbinic terminology on Ephrem's terminology. This influence is apparent in two aspects of Ephrem's language: his vocabulary and the semantic coverage of his terminology. In both these areas, he has more in common with the rabbinic terminology and its usage, than with that of Roman law and Christian writers. Furthermore, in some of the cases it is possible to determine that Ephrem's legal terminology is closely related to Palestinian terminology in particular. This conclusion emphasizes the distance between Ephrem and his Greek and Latin Christian contemporaries, and reflects his deep ties to Jewish legal traditions, ties which are a result not only of a similar language but also of similar legal views.

Yifat Monnickendam completed her tenure as a Crane Foundation Post-Doctoral Fellow at the Jewish Studies Program, Johns Hopkins University, as well as a Visiting Scholar at the Catholic University of America's Center for the Study of Early Christianity (2010-2012). She specializes in the comparative study of Jewish, Christian, and Roman sources from antiquity to early Byzantium, viewing them through the lens of legal issues. In the coming year she will join the Martin Buber Society of Fellows at the Hebrew University of Jerusalem, where she will be working on her next project, the *Syro-Roman Lawbook*, and its relation to Jewish, Roman and Christian legal traditions.

Leib Moscovitz

Leib Moscovitz, "*Peshat*-Based Conceptualization": Some Observations on the Halakhic-Exegetical Methodology of R. Isaac Ze'ev Soloveitchik (Session 11B)

An extremely innovative approach to the interpretation and analysis of the Talmud and Maimonides' Mishneh Torah, based primarily on abstract conceptual analysis, was developed in the early twentieth century by R. Chaim Soloveitchik of Brest-Litovsk (Brisk). In this paper, I propose to analyze a significant and somewhat startling variant of R. Chaim's approach, as manifest in the writings of his son, R. Isaac Ze'ev (henceforth: RIZS). Like his father, RIZS adopted a conceptualist approach to the interpretation of rabbinic sources, which placed considerable emphasis on the identification of seemingly similar, though ultimately distinct, legal principles (*shnei dinim*) potentially applicable to particular cases. However, while the distinctions and categories introduced by R. Chaim frequently seem completely at odds with the plain sense of the relevant texts, those utilized by RIZS very often seem to reflect the plain sense of those texts. Often these distinctions and categories seem self-evident or logically necessary, while elsewhere they emerge almost explicitly from other Talmudic passages or from the writings of post-talmudic commentators. In this paper, I propose to illustrate this phenomenon, to account for the differences between RIZS's approach and his father's, and to analyze the nature of RIZS's halakhic creativity.

Leib Moscovitz is a Professor in the Department of Talmud in Bar-Ilan University, where he currently serves as department chair. His research focuses on two principal areas: the Talmud Yerushalmi, and the history of the halakhah and rabbinic legal thought. He has served in the past as an editor of *Jewish Law Association Studies* and as director of the Jewish Law Association Publications department. He also serves on the editorial boards of various scholarly journals, such as *Dine Israel* and *JSIJ* (*Jewish Studies, an Internet Journal*). <leib.moscovitz@gmail.com>

David Nimmer

David Nimmer (UCLA School of Law) – Austrian Law as the Template for a Halakhic Ruling (Session 5B)

In 1860, Joseph Saul Nathanson authored a copyright teshuva. The *Sho'el u-Meishiv* invoked the *dictum* that "our wholesome Torah is not like your idle chatter," reasoning from protection under Austrian law to conclude that halakha can be no less solicitous. The logic was that if Gentile law recognizes X, Jewish law must do so all the more so. Yet, instead of invoking copyright law, he overtly mentioned the invention of a machine—which comes from the neighboring domain of patent law. Nonetheless, one may presume that Nathanson knew of the Austrian Law for Protection of Literary and Artistic Property (1846). Nathanson rooted copyright protection in *property* law. Previous decisors had invoked other rationales—such as a rabbinic *herem* or an interpretation of *hasagat gevul*. By contrast, the position of the *Sho'el u-Meishiv* is far more categorical. Nathanson's

conclusion that works of authorship can be acquire a property interest under halakha drew criticism and represented an isolated viewpoint. Nonetheless, it was taken up in our own day by HaRav Elyashiv. who cited *Sho'el u-Meishiv* for the proposition that copyright protection can indeed constitute property under halakha. So the arc runs from Austria to the responsa literature to modern-day Israel.

David Nimmer, UCLA School of Law, together with his colleague Neil Netanel, is completing *From Maimonides to Microsoft* (Oxford University Press, forthcoming) exploring rabbinic responsa that address copyright and author's rights, issued from 1550 to 1999. Nimmer's previous articles on point include *Rabbi Banet's Charming Snake*, 8 Hakirah 69 (2009), and *In the Shadow of the Emperor: The Hatam Sofer's Copyright Rulings*, 15 Torah U-Madda J**.** 24 (2010). He is the author of the 11-volume treatise, Nimmer on Copyright, as well as two anthologies published by Kluwer: Copyright Illuminated: Refocusing The Diffuse U.S. Statute (2008) and Copyright: Sacred Text, Technology, And The DMCA (2003). <DNimmer@irell.com>

Aaron Orenstein

Aaron Orenstein (Zefat Academic College) – Selling an Asset in the Process of Liquidation: Considerations of Time and Space (Session 8B)

What is the best way to treat the value of an asset that is in the process of liquidation? Is it appropriate to grant the debtor's request to delay proceedings until a time that is convenient for him? Should the debtor be allowed to take his movable asset to a location where, according to him, it is possible to obtain a higher price for it? Should the creditor's wish to sell the item at a higher price at some other time or some other place be taken into consideration? In the Arachin tractate the Mishnah states that "consecrated property [*hekdesh*] has its place and its time." Maimonides interprets this rule to mean that those who owe money to consecrated funds [*hekdesh*] are not allowed to delay the liquidation of the designated asset by claiming that it will be possible to obtain a higher price for it if the sale is postponed to more convenient time or if the asset is relocated to another place. The fact that the proceeds are consecrated prevents delaying the liquidation. Does this ruling concerning consecrated funds also apply to other types of collecting or is it a particular ruling that follows from the fact that the money is destined for *hekdesh*? Over the centuries the ruling has been expanded. Some (Rosh) applied the ruling also to the collection of a debt arising from loans, others (Tur) applied it also to the collection of compensation for damages, and others yet (Maharshal) argued that the rule is general and applies to the collection of any type of debt. In my talk I analyze the various approaches to this issue.

Dr. Aharon Orenstein, Adv., is a Member of the faculty of the School of Law at the Zefat Academic College. He received his PhD degree in law from Bar-Ilan University in 2008 for a thesis on "Property damage assessment in Jewish law".

Aaron Panken (Session 9B)

Rabbi Aaron D. Panken, Ph.D., has taught Rabbinic and Second Temple Literature at Hebrew Union College - Jewish Institute of Religion in New York since 1995. Before his return to full-time teaching and research in 2010, he served as Vice President from 2006-2010; as Dean from 1998-2007 and as Dean of Students from 1996-1998. An alumnus of the Wexner Graduate Fellowship, he earned his doctorate at New York University. His publications include individual studies of halakhic terminology and *The Rhetoric of Innovation* (University Press of America, 2005), which explores legal change in Rabbinic texts. He is currently at work on a book-length history of Hanukkah.

Sagi Peari

Sagi Peari (University of Toronto) – The Two Riddles of Legal Positivism: the Case of Jewish Law (Session 5B)

This paper deals with one core question: can parties agree for their private law dispute (i.e. in contract, tort, unjust enrichment, property) to be governed by relevant Jewish law provisions? This question involves perhaps two of the biggest theoretical puzzles of choice-of-law jurisprudence: the justification of the very popular parties' autonomy principle, and the possibility of the

application of non-state law. The very conception of the sovereign state, the legislative body of which enacts positive law provisions, seems to be at odds with the idea of the ability of parties to determine the identity of the framework that will govern their dispute. Joseph Beale famously mocked this possibility as no less than: "permission to do a legislative act". Furthermore, since Jewish traditional law is a non-state law, it entails an even deeper problem for legal positivism.

Based on the neo-Kantian theoretical framework of the choice-of-law question that I have been developing in recent years, I shall argue that the Kantian normative justification of legislative authority provides a justification for both challenges of legal positivism: (1) the parties' autonomy principle and (2) the possibility of the application of non-state law. However, this theoretical framework also imposes several significant limitations on the choice of the parties: (1) it has to be specific and comprehensive enough; (2) it has to have a "reasonable connection" to the litigating parties; and (3) it has to meet certain substantive requirements related to the transactional equality of the parties. The actual operation of the argument will be executed through an examination of several Jewish private law provisions to meet the above-mentioned requirements.

Sagi Peari, LLB (Tel Aviv), LLM (Toronto), is a SJD Candidate at the University of Toronto Faculty of Law. My doctoral dissertation deals with various theoretical dimensions of private international law. I am a holder of the Joseph-Armand Bombardier CGS prestigious doctoral fellowship. One of my articles was published at the Canadian Journal of Law and Jurisprudence. I have also presented papers at conferences at Osgoode Hall Law School, McMaster University, and King's College.

Daniela Piattelli (Session 6B)

Prof.ssa Daniela Piattelli, a founder member of The Jewish Law Association, held the Chair of Institutions of Roman Law at the University of Rome Tor Vergata from 2002 to 2011 and the newly-instituted Chair of the Laws of the Ancient Eastern Mediterranean, in the same University, from 2006 to 2011. She was previously Professor of the Laws of the Ancient Near Eastern Mediterranean at the Faculty of Law, University of Salerno, where she also taught Comparative Public Law and Foundations of European law. From 1986 to 2011 she taught Ius Hebraicum at the Pontificial Lateran University, Rome, where she was also a member of the Scientific Committee of the university's well-known journal, *Studia et Documenta Historiae et Iuris*. Her publications include "Ricerche intorno alle relazioni politiche tra Roma e L'EQNOS TWN 'IOUDAIWN 141 A.C. al 4 A.C.", *Bullettino dell'Istituto di Diritto Romano "Vittorio Scialoja"* 74 (1972), 219-347; *Concezioni giuridiche e metodi costruttivi dei giuristi orientali* (Milano: Giuffrè editore, 1981); *Tradizioni giuridiche d'Israele: All'origine dello 'statuto' del proselita* (Torino: Giappichelli editore, 1990); and *Libertà individuali e sistemi giuridici. Profili storico-giuridici (Mondo antico ed Israele* (Torino: Giappichelli editore, 1997). She was a co-editor of and contributor to the Association's Textbook: *An Introduction to the History and Sources of Jewish Law* (Oxford: The Clarendon Press, 1996).

Shlomo Pill (Session 2)

Shlomo Pill is an aspiring Jewish Law scholar whose research focuses on personal and institutional interpretive authority and autonomy, and the relationship between law, morality, and democracy in the *halakhic* and American legal systems. Shlomo's publications include *Recovering Judicial Integrity: Towards a Duty-Focused Disqualification Jurisprudence Based on Jewish Law*, 39 Ford. Urb. L.J. 511 (2011). A recent graduate of Fordham Law School, and a *semikhah yadin yadin* student at Yeshivas Pirchei Shoshanim, Shlomo plans to pursue an LLM and SJD in Law and Religion at Emory Law School this Fall, where he will also continue his *semikhah* studies under the tutelage of Rabbi Professor Michael Broyde.

Larry Rabinovich

Larry Rabinovich (New York) – Arkaot in the Responsa Literature (Session 15A)

Two responsa - one from the dawn of European rabbinic scholarship and one from its sunset- point to a change in popular attitudes over the centuries toward the use of non-Jewish courts to settle disputes between or among Jews . Ostensibly the thrust of each of these responsa is the same: the posek is asked about one who has litigated (or has indicated an intent to litigate) a monetary claim in the secular courts. Both reach the same conclusion - it is impermissible. The background noise, though, suggests that while

formal halakhic opinion remained constant, what was once almost a taboo was now common fare for the community as a whole. R. Yitzhak Alfasi was asked about the propriety of suing in secular court where the deed upon which plaintiff's case largely rested had itself been executed in secular court. The plaintiff, in short, appears to have been one who believed himself justified , in this case, to seek justice outside the Jewish legal system , but who ordinarily would have utilized the bet din to adjudicate his disputes with fellow Jews. Moreover, the Rif appears to have had confidence (backed by the power to issue a ban) that his ruling forbidding the appeal to arkaot would be followed. The second responsum, by R. Yitzhak Elhanan, at the end of the 19th century, shows a scholar fighting a rear guard action regarding a law that even other leading rabbis were ignoring.

Litigation in non-Jewish courts was only one of a variety of ways in which Jews confronted the question of their own status as citizens or denizens of a society in which they were outsiders. When the general society was weakly organized, and/or when Jews were either disparaged or else largely ignored by the majority culture, there was little incentive for members of the Jewish community to buck the rabbinic establishment and seek justice in the courts of the Gentiles. Even then, though, at least some Jews would have been exposed to the secular legal system either through litigations with non-Jews or involvement with criminal proceedings for which Jewish courts generally lacked jurisdiction. This may have weakened the taboo. The law against litigating against other Jews in secular court itself was tested whenever non-Jewish rulers - whether for religious reasons or good government reasons - opposed Jewish legal autonomy in principle. It may not have been, though, until Jews began to trust the governmental authorities - and began to pull away from the control of rabbinic and lay leaders of the community - that the law against litigation in "arkaot" began to be massively violated.

Larry Rabinovich is a partner in the New York City office of Hiscock & Barclay, LLP. His professional focus is on commercial disputes, particularly in transportation law and insurance coverages. He has served as treasurer of the Association since 2006. <LRabinovich@hblaw.com>

Amihai Radzyner

Amihai Radzyner: The Influence of Secular Law on the Halakhic Process: The problematic case of Current Israeli Rabbinical Courts (Session 4A)

The system of official rabbinical courts has been recognized in Israeli law as an official judicial system of the state, and it has special authority to litigate matters of marriage and divorce for all Jewish residents of Israel. Over the years, a substantial portion of issues related to family law have not been left within the exclusive jurisdiction of rabbinical courts. It appears that in recent years a backlash of a new type has been developing by the rabbinical courts, which is of great interest to legal and halakhic scholars as well as to those who follow the changes taking place in the relations between religion and state in Israel. Some of the rabbinical judges are adopting problematic halakhic positions, which have rarely been used in the past, in order to restore to the rabbinical courts' authorities that have been denied to them by Israeli law or by the civilian courts. In other words, the Halakha serves as a weapon used to restore authority to the rabbinical courts, or to protect it from further erosion. In the present lecture, I will show a critical examination of one or two halakhic tools of this type, which in my opinion are being used in certain panels of rabbinical judges as instruments for the preservation of their authority.

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Steven Resnicoff

Steven Resnicoff (DePaul University College of Law) – May One Kill Some Innocents to Save the Rest? (Session 15B)

There are tragic scenarios in which it may be possible to save the many by killing the few. The threat to the many may emanate from diverse sources, including intentional wrongdoers (such terrorists) and natural disasters. Considerable literature has addressed this problem, relying heavily on the discussion in Tractate Terumot of the Jerusalem Talmud and pertinent Midrashim, regarding brigands who surround a caravan and threaten to massacre everyone unless they surrender someone to be killed. These sources are widely cited and relied upon by scholars who conclude that Jewish law forbids downing a suicide plane containing

innocent passengers, even if doing so would save many innocent people on the ground from being killed.

This paper argues that this most, if not all, of this scholarship fails to identify a critical distinction, one that is suggested, perhaps serendipitously, in the title of a classic work by the late Professor David Daube, "Collaboration With Tyranny in Rabbinic Law." Specifically, the paper argues that efforts to *frustrate* the desires of willful wrongdoers, or tyrants, is fundamentally different from, and more permissible than, collaboration with tyrants.

Steven H. Resnicoff is a professor at the DePaul University College of Law in Chicago, Illinois, and Co-Director of its Center for Jewish Law & Judaic Studies ("JLJS"). His most recent book is *Understanding Jewish Law* was published in May 2012, and most recent law review article is "Jewish Law and the Tragedy of Sexual Abuse of Children in the Orthodox Jewish Community," published in June 2012. Prof. Resnicoff is currently working on a book for Oxford University Press examining Jewish law's approach to live and death choices. His secular law areas of expertise include bankruptcy, commercial paper, and ethics. <SRESNICO@depaul.edu>

Yosef Rivlin (Sessions 7, 13)

Yosef Rivlin is a Full Professor in the Department of Talmud, Bar-Ilan University, Israel, and was Head of that Department in 1997-1999. He is also Chair of the Orot Israel Academic College (since 2011) and vice-editor of *Jewish Studies – an Internet Journal*. A member of the Israel Bar (from 1992), he has also served as Chairman of the Jewish Law Association (2004-2008). His research areas are in Jewish Family Law; Cairo Geniza Legal Documents; Wills and Inheritance; and Bills and Contracts in Jewish Law. His books (in Hebrew) include *Jonah with commentary of Rabbi Elijah of Vilna* (1986, 2nd ed. 1995), Bills and Contracts from Lucena (1995, also translated into German); Inheritance and Wills in Jewish Law (1999). He is co-editor of *Jewish Law Association Studies* XXII (2012), and has authored some 90 articles.

Ram Rivlin

Ram Rivlin (Tel Aviv University) – The Death and Afterlife of Modern Jewish Divorce Law (Session 8B)

What is Jewish Divorce Law about? According to Halakhah, marriage should be terminated by either concrete grounds for divorce, or by mutual consent of the parties. However, western legal regimes now enable unilateral divorce even in absence of any other ground. In the presence of civil divorce (such as in the US) or secular adjudication of the separation (such as in Israel), the mutual consent requirement is no longer a barrier for separation. This fact overshadows the inner logic of Jewish divorce law, and radically changes the rationale of the mutual consent requirement, emptying it of its normative content regarding the appropriateness of separation. My paper tracks and analyzes two contemporary rabbinic reactions to this situation. The first accepts the civil separation as an independent ground for divorce, hence renders Jewish divorce law *ritualistic*, dealing primarily with properly delivering the *get* whenever marriage is terminated according to secular norms. In contrast, others advocate reinterpreting the consent requirement as designed to ensure the parties' rights upon dissolution (such as division of marital property), through a *bargaining* process. According to this view, the consent requirement affects primarily the terms of the divorce settlement, rather than the grounds for separation. The paper depicts, explains and evaluates this twofold reaction.

Dr. Ram Rivlin studied Law and Philosophy at the Hebrew University of Jerusalem. His dissertation, which analyzed divorce negotiation drawing on normative ethics and legal philosophy, won the Moshe Zilberg Prize for outstanding dissertation in the field of law. In 2011-2012, Ram was a Post-Doctoral Scholar at Tikvah Center for Law and Jewish Civilization at New York University, being also a Rothschild (*Yad Ha-Nadiv*) fellow and a Fulbright Scholar. In 2012-2013 Ram is going to be a fellow at the Edmond J. Safra Center for Ethics at Tel Aviv University.

Avinoam Rosenak

Avinoam Rosenak (Hebrew University in Jerusalem) – *Torat Ha-Melekh*: Pseudo-Formalistic Halakhacization in a Time of Ideological Crisis (in Hebrew, Session 12A)

Torat ha-melekh: dinei nefashot bein yisra'el la-amim [*The Sovereign's Law: The Law of Capital Offenses in Israel and Other Nations*] is among the most discussed and controversial halakhic works to appear in Israel in the last decade. In this paper, I want to consider the nature of the book and suggest a cultural and meta-halakhic interpretation. I can do so here only in outline form; a fuller discussion will have to await the article on the subject that I am preparing.

Religious Zionism, as we know, takes in various schools of thought, most of which fall on one side or another of a fundamental divide between two approaches, each of which has diverse ramifications. Each of these approaches, it may be noted, has an analogue in the overall Zionist movement.

One approach, if I may describe it in terms borrowed from the late Rabbi J. B. Soloveitchik, sees Zionism as a movement dealing with the "covenant of fate"; it entails saving Jews from their enemies and restoring to Jews sovereign control over their lives. This form of Zionism sought to establish a space that would serve as a "shelter," a "home." This form of Zionism also had a vision of the "covenant of destiny," but that covenant was not marked by distinctly Zionist qualities. The Zionist Jew's "covenant of destiny" was the same as the "covenant of destiny" that bound every Jew *qua* Jew; it bore no typically Zionist qualities. In that spirit, we can understand, the pragmatic dimension of Rabbi Reines's call to support Zionism and Rabbi Soloveitchik's affiliation with the Zionist movement.

The second approach is prominently embodied in the school of Rabbi Abraham Isaac Hakohen Kook. It regards Zionism as a spiritual movement (and its affinity to the "spiritual Zionism" of the anti-halakhic writer Ahad Ha-Am is quite evident). In the case of Rabbi Kook, the approach is expressed through the doctrine what is known as the "Unity of Opposites". He saw Zionism as a stage of history necessarily involving physical and spiritual redemption and accordingly demanding a new way of thinking about the world. That is the impulse for the establishment of a "Torah of the Land of Israel."

Those teachings, as they emanated from the school of Rabbi Kook, turned away from the binary thinking likely to be fostered by halakhic concepts that divide the world into "pure" and "impure," "kosher" and "not kosher," "forbidden" or "permitted." The Unity of Opposites is unwilling to engage with a binary structure. It makes possible the crossing of halakhic boundaries, and the socio-political expression of that stance is its almost limitless ability to embrace secularity, secularists, and the universalistic aspects of the modern world. And that inclusiveness is a position held in the first instance as a matter of principle, not merely *post facto*.

From the perspective of Unity of Opposites approach, secularization embodies, paradoxically enough and without even realizing it, the will of God. This approach sees the various forces that take part in history as necessary forces that express God's redemptive will in history; it understands them as instruments of divine providence.

A minor expression of this position can be seen in Rabbi Kook's well known statement, in his book *Orot* (p. 71), regarding the three forces that he identifies as struggling with each other within Israel: "the sacred (Orthodoxy); the nation (that is, the new nationalism), and humanity (that is, universal liberal culture). According to Rabbi Kook, life takes in all three; they are inseverable, and all must be present in the life of the nation.

But Rabbi Kook went even further, creating a kabbalisticaly inspired alternative picture of the relationship between sacred and secular. He found a sort of spiritual exaltedness specifically in the forces of secularism, and he maintained that the attribute of "Zion" (that is, secular Zionism or the New Yishuv) had its foundation in the higher *sefirot*, or divine emanations, while the attribute of "Jerusalem"—the overtly sacred, such as the Sabbath, the divine presence, and "sovereignty," embodied in the Old Yishuv—reflect the lower, empty *sefirah* (it contains no active agents). That is why the latter forces are revealed in the world in all the grandeur of their sanctity, while the former, because the sanctity implicit within them is so powerful, are revealed only in secular embodiments. It follows, paradoxically enough, that the more exalted forces are below, while the less exalted forces are above. The holy has no sanctity in and of itself, while the secular necessarily embodies supernal holiness. In this light, too, it is possible to formulate the "covenant of destiny" that is part of the future and redemptive "Torah of the Land of Israel." We likewise can understand on this basis what Rabbi Kook means when he says that "sometimes, when there is a need to transgress a matter in the Torah" and a breach of the *halakhah* results, it is "a remedial act (*tiqqun*) that dismays the heart externally but causes it to rejoice through its inner meaning."[1]

This approach has echoes of the idea that "a commandment performed through a transgression" can sometimes be something positive—a messianist, antinomian, and anarchistic idea that emerged in the time of Shabbetai Zevi. But Rabbi Kook's Unity of Opposites never developed into a Sabbatean stance. The Unity of Opposites of Religious Zionism required intense dialectical complexity. It embodied an unambiguous commitment to *halakhah* while simultaneously entailing a cultural openness

that gazed in with wonder at God's widely multi-faceted ways of revealing himself in the world.

This complexity bore a utopian vision regarding the future of the State—a State that Rabbi Kook, who died in 1935, never saw in action. These implications of this utopia were political, social, cultural, religious, and halakhic. Rabbi Zvi Yehuda Kook, the son of Rabbi Abraham Isaac Kook, reinforced the utopian vision in its "political" translation, giving rise to hopes for political and cultural progressivism. The elder Rabbi Kook, who was possessed of a particularly sensitive dialectical capacity, spoke of a State that was destined to be "God's throne in the world," but the reality of the secular state experienced by his students posed a difficult challenge. It was not long before his students, whose dialectical capacity fell short of their teacher's, began to voice their disillusionment.

The first sign of the crisis in Religious Zionism appeared in the comments of Rabbi Moshe Zvi Neriyah as early as the 1950s, as he described the gap between the vision of the State of Israel as the "foundation of God's throne in the world" and the reality of the Israeli secular-liberal and democratic polity. Rabbi Neriyah used such terms as "spiritual crisis," "internal contradiction," and "sense of dual loyalty" (that is, to the Torah of Israel on the one hand and the State of Israel on the other). But a glance at the journals published in these circles during the 1980s shows their perplexity to have intensified by an order of magnitude in the wake of Israel's giving up the Sinai and the town of Yamit in the wake of the peace agreement with Egypt. The crisis became still greater during the first decade of the new century with the withdrawal from Gush Katif and Amona. Following that withdrawal, some students of Rabbi Zvi Yehuda Kook began to indulge in previously unheard of hyperbole. Rabbi Moshe Tsuriel, for instance, wondered, using a phrase from the Prayer for the State of Israel, whether this is truly "the first flowering of our redemption."[2] "If Rabbi Abraham Kook were still with us, would he continue to declare that we are truly seeing the stages of redemption? Or might he, too, have changed his mind? … Would we not show sound understanding if we drew the conclusion that Rabbi Kook was simply in error?"

In my forthcoming book *Sedaqim* [*Fractures*], to be published by Riesling, I trace the ongoing diminution in the capacity of Rabbi Kook's followers to embrace opposites. It is readily evident that Rabbi Kook's ability to see a "higher sanctity" in an approach contrary to his own has almost entirely disappeared. The sharp responses of Rabbi Elyakim Levanon, rabbi of Alon Moreh and Samaria, provide a clear expression to that development as he calls for withdrawal from the secular Zionism that is no longer fit to lead the redemptive State. As he puts it, "The residents of Tel-Aviv should be removed to Los Angeles, after which there will be a new Near East here." He maintains that "one can conclude, in sorrow but in certainty … that this hope [that is, the hope that the secularists will be elevated to sanctity—A. R.] has been dashed." The declarations of crisis are numerous, and this lecture is not the place for an extensive discussion of them.

The many blows to the Unity of Opposites theory have produced two parallel reactions. One is expressed in the repeated efforts to formulate a "new interpretation" that will allow for the renewal of Unity of Opposites thinking, in one form or another, even in harsh and challenging circumstances. These efforts have been made by most of Rabbi Kook's disciples.

The second reaction is abandonment of the Unity of Opposites, something that began to take shape after the Gush Katif and Amona crisis. It is clearly expressed in the writings of Rabbi Israel Ariel, head of Makhon Ha-Miqdash in Jerusalem, and of Rabbis Isaac Shapiro and Joseph Elitsur, authors of the *Torat ha-melekh*. These are men whose origins lie at the heart of Religious Zionism; they have a deep attachment to Yeshivat Merkaz Harav in Jerusalem as well as close family ties to key rabbinic figures within Religious Zionism, such as Rabbi Jacob Ariel (head of the Tsohar rabbis) and Rabbi Joshua Shapira (head of the Ramat-Gan yeshiva). They were shaped by the thinking of Rabbi Kook's school, and their abandonment of it is an express declaration that they no longer have faith in it.

That lack of faith can be seen in the response of Rabbi Israel Ariel to the events at Amona. Other Religious Zionist rabbis sought desperately to maintain the ideological and social fabric and reconcile war to the end on the one hand with a sense of brotherhood on the other. Rabbi Ariel, in contrast, writes without the sort of inner tension that characterizes Unity of Opposites and its advocates. He does not look to Rabbi Kook's writings or to elements of the Unity of Opposites; rather, he casts his lot entirely, or so it appears, with the halakhic literature, making it into a platform for binary thinking. Asked how Israeli soldiers coming to vacate a Jewish settlement were to be treated, and whether they were proper objects of the commandments to love your fellow as yourself and not to hate your brother in your heart, he responded that "when a Jew raises his arm against the Torah of Moses and against one who is fulfilling its commandments," he is not "your brother with respect to Torah and commandments." Soldiers and policemen vacating a settlement, therefore, are not "your brother";[3] rather, they are to be seen as evil-doers, enemies of God.[4] Abandoning the Land and leaving it in the possession of a non-Jew is equivalent to "uprooting the entire Torah" and violates the prohibitions against conveying land in Israel to gentiles, against theft, and against trespass; and one who fails to intervene on behalf of the settlers violates the prohibition on standing idly by while your fellow's blood is spilled—or, more broadly, suffers an injury. Accordingly, one is obligated even to give up his life in sanctification of God's name in waging this battle. He terms the Israeli court that authorized the evacuation a "band of traitors" and asserts its laws are "utterly null and void, and one is obligated to fight against them in *every* possible way." He continues: "One who takes part in the destruction of houses

so the land may be turned over to the Arabs is in the category of an 'informer'" and subject, according to Maimonides as read by Rabbi Ariel, to being destroyed and consigned to hell." One who is able to help the settlers and fails to do so "is accursed," and according to the halakhic sources, as he reads them, it is permissible, as a matter of Torah law, to protect one's property and "prevent the entry of someone breaking into one's home by using even mortal force."

These ideas clearly express an approach that presents itself as exclusively halakhic, utterly divorced from the discourse of Unity of Opposites. It makes no effort to incorporate the opposing positions and certainly not to find any reason, or virtue in them.

Rabbi Ariel's statements are a matter of theory, but the ideas have been translated into action in a social phenomenon taking shape "on the mountains of Samaria". I am referring to the group calling themselves Price Tag. I see a deep affinity, as a matter of political theory, between the Price Tag activists and *Torat ha-melekh*. Let me briefly describe it.

"Price tag" began its operations in 2008, conducting acts of violence—usually reactive—against Palestinians. These acts have included stoning, burning fields, cutting trees, damaging mosques; in addition, there has been violence against IDF property and its soldiers. Price Tag's operations have been carried out by hundreds of activists and passively supported by a few thousands more.

The logic behind Price Tag took shape in the wake of the failure to prevent the abandonment of Gush Qatif and Amona and the ensuing despair. The premise that "we will prevail though love" (a technical and functional, if not cynical and aggressive political translation of Unity of Opposites) came to be seen as flawed. At the same time, there was a loss of confidence in all other forms of political or settlement action. The sense was that the political instrumentalities on the one hand and the theoretical-utopian tools on the other had proven useless. The Unity of Opposites dialectic having failed with respect to relations between secular and religious Zionists, the Price Tag people adopted, instead, a dichotomous approach. As they saw it, it was necessary to widen the gap between the two sides, making it into a chasm between "light and darkness" and "left and right." These forces would no longer be allowed to intermingle, and no efforts whatsoever would be made to find virtue in the Other. All one's resources should be brought to bear on the direct confrontation. The conflict was to produce two sorts of de-terrence—one against the institutions of the State and the other against the Palestinians. The threat of violence on the part of settlers would make the State more careful about requiring evacuations of settlements, and the Palestinians would come to see that the Jews in the settlements would respond in kind to violence. The approach abandons any interest in maintaining dialogue or building bridges; it leaves no room for sensitivity to situations that might be seen to involve "a desecration of God's Name"; and it casts aside belief in the possibility and benefit of inclusiveness. On the contrary: it believes in using violence to generate conflicts and clashes. Paradoxically, the Price Tag people see these clashes as empowering. As opposition to them intensifies and criticism becomes more extreme, they believe, more and more people within Religious Zionist circles will come to identify with them and join their ranks, as they are put off by the criticism leveled against them.

A year after the start of Price Tag activities, *Torat ha-melekh* was published. It produced a public impact previously seen only in the wake of the publication of *Barukh ha-gever*, a book responding to the furious reaction to Barukh Goldstein's massacre of Muslim worshippers at the Makhpelah Cave in Hebron. *Barukh ha-gever* endorsed Goldstein's actions and even considered them to be praise worthy; but it lacked the halakhic gravitas of the later work here under consideration.

Torat ha-melekh is the first volume in a series now being produced,[5] and it positions itself as an exclusively halakhic work. Its two authors teach at the Od Yosef Hai yeshiva in Yizhar, and consider themselves students of Rabbi Isaac Ginsburg (president of the yeshiva). It is he who also provides the kabbalistic mantle for this halakhic move. It also is worth noting the affinity between these theories and the political phenomenon embodied in the figure of Rabbi Meir Kahane, on which I will have more to say later.

Torat ha-melekh uses distinctions drawn in the *halakhah* between Jews and Gentiles and applies them to contemporary circumstances so as to unleash, in an utterly unparalleled manner, all restraints on the use of force against Gentiles. In their introduction, Shapira and Elitsur warn that it is forbidden to kill Gentiles, but their book is devoted to doing the opposite: it explains when it is permitted and desirable to kill non-Jews; it raises the possibility that there may be no reason to allow non-Jews to continue to exist in the world (p. 175); and it suggests that it is permissible to kill children in time of war if it is clear that when they grow up, they will "harm us." (In an article written by Rabbi Israel Ariel in support of the book, he approves of such actions.) The book transforms a non-Jew's life into something having the same value as an animal's life.

The book uses the distinction drawn by Maimonides between the prohibition of murder, which applies only to a Jewish victim, and that of shedding human blood, which applies to a Gentile. It follows that one who kills a Gentile is not subject to capital punishment. In light of that distinction, the authors attempt to argue that the lives of non-Jews are considered only from a pragmatic and rational perspective, in contrast to Jewish lives, regarding which non-pragmatic considerations related to sanctity of life come into play. That difference affords the basis for some of the halakhic determinations reached in the book. For example, according to the authors, if a group of gentiles is ordered by an enemy to offer one of their number to be killed so that the remainder of the group will be spared, it is entirely proper to comply with the demand and hand over the person requested in order

to save the rest. But that is not what the *halakhah* ordains with respect to Jews. A group of Jews in those circumstances is required to refuse to comply even if it means all will be killed, for the applicable considerations are not functional and practical. In such a case, the halakhic analysis will require that a large number of Jews lose their lives, though in other situations, the outcome will be the opposite. The lives of non-Jews can be sacrificed to save the life of a Jew, for a Jew's life, as they see it, is worth more than a gentile's life.

That simple yardstick generates a mode of binary thinking that becomes a one-dimensional principle on the basis of which a variety of ethical and halakhic issues are resolved.

At the same time, the authors of the book emphasize the importance of rejecting human reason in favor of God's Torah, of yielding to simple belief and undertaking to fulfill God's command before even knowing what it is. One strives to attain an understanding of the Torah, but in doing so, one must recognize that human morality cannot be applied against the Torah's truth. Having set that fundamental premise, *Torat ha-melekh* goes on to set out the halakhic conclusions it reaches on the basis of its binary analysis described earlier. Those conclusions include the permissibility of harvesting an organ from a gentile without his consent in order to save the life of a Jew (p. 164); the absence of any prohibition on killing a gentile who does not observe the seven Noahide commandments (p. 220); the permissibility of taking a the life of a gentile—whether hostile or not, whether adult or child—during military operations if doing so has a likelihood of saving the lives of Jewish soldiers (pp. 201, 205) or if the gentile has expressed any support at all for those fighting against Israel (pp. 185; 207). To save the life of a Jew, the book permits killing a gentile hostage (even one in the halakhic category of "righteous gentile" who is guiltless in the matter at issue [p. 164]), or even killing a gentile citizen, for in war, one applies the rule that "the best of gentiles should be killed" (p. 230). One may apply pressure to a hostile gentile by shedding the blood of his child, and one may kill all gentiles opposing Israel in the war, for there is no reason to expect them to repent.

The treatise was greeted in the media and by the public with forceful attacks—attacks that authors expected and that actually pleased them, given the political reasoning of the Price Tag group, described earlier. And, as expected, after some supporters of the book and its authors were investigated, additional statements in support were voiced. Most of the support, however, pertained more to concerns about denial of the authors' rights to free speech and academic freedom than to endorsement of the book's content, and it was joined in by dozens of Religious Zionist rabbis.

Let me briefly discuss some of the rabbinic criticism of the book.

Some of the books rabbinic critics pointed to the book's destructive educational and existential effects on young readers who might study it. Rabbi Yaakov Medan (head of Yeshivat Har Etzion) maintained that the book "should be burned" and "Rabbi Shapira be rejected as a teacher of *halakhah* in Israel"; Rabbi Medan was concerned that readers of the book "would take action" and internalize its authorization of bloodshed: "On account of [the book], young men of Gevaot might spend their entire lives in prison, while the rabbi who wrote it continues to teach Torah publicly and sing table songs on the Sabbath."

Rabbi Shlomo Aviner likewise denounced the book, maintaining "there is no such notion that a gentile's blood is forfeit and may be shed at will." Rabbi David Stav expressed outrage over the book's ethical distortions, maintaining that Rabbi Isaac Shapira should be declared a *rodef*—a "pursuer," against whom reasonable acts of self defense may be employed—and his writings classed as a desecration of God's name that can never be atoned for. And Rabbi Benny Lau attacked the invocation of academic freedom within a rabbinic world used to indoctrination and condemned the invocation of the Holocaust, in terms suffused with alienation and hatred, in order to justify hatred and violence against gentiles.

Concrete halakhic criticism of the *Torat ha-melekh* can be found in the response to it by Rabbi Samuel Ariel, of Yeshivat Othniel. Ariel points to the lack of moral sensitivity and the disregard for "common sense" and "reasoning" in the book's understanding of *halakhah*. According to Rabbi Ariel,[6] *Torat ha-melekh* is replete with halakhic and theoretical distortions flowing from moral blindness. As an example, he cites the erroneous reading of the law that allows the authors to permit killing any gentile citizen in wartime on the basis of a source speaking only of citizens involved with the hostile forces. He maintains that if the authors of *Torat ha-melekh* sensed the plain moral problem in the killing of gentiles—and their inability to sense that problem is at the heart of the difficulty—they would look again at the sources and see that what they claim to find in them in fact is not there!

Also harshly critical of *Torat ha-melekh* is a book by Ariel Finkelstein, who points out the logical flaws in its halakhic conclusions and uncovers their meta-halakhic doctrines and preconceived notions. In so doing, he refutes the authors' claim to have written a purely halakhic treatise free of any prejudgments.

Finkelstein divides his critique into three parts. He first undertakes "a meta-halakhic inquiry into the prohibition on killing a gentile and into the issuance of rulings on the laws of capital offenses." He there uncovers, as already noted, the authors' premises and their distortions of accepted meta-halakhic principles. In his second part, entitled "Discrimination and Racism – On the *Halakhah*'s Attitude toward Strangers," Finkelstein clarifies that question by explaining the affinity between natural morality and *halakhah*. Finally, Finkelstein undertakes "a halakhic confrontation with the book *Torat ha-melekh*." Here, he grapples with

the halakhic readings of the authors and points to the errors in their halakhic analyses.

As already noted, the authors of *Torat ha-melekh* sought to argue that the morality implicit in the Torah is authentically Jewish and therefore properly translated into contemporary reality. Finkelstein points out that argument's lack of interpretive insight, citing, in support of his own view, Rabbi Kook's explanation of the relationship between contemporary morality and biblical verses. Not everything in the canonical scriptures—which the authors of *Torat ha-melekh* mean to channel directly into the present—in fact can or should be imported into contemporary reality. Writings originating in the past were sensitive to the moral insights accepted within the political contexts of the past. To avoid channeling them into the present free of interpretive and moral mediation in no way compromises the Bible's authority. The Bible, according to Rabbi Kook, includes reactive dimensions. He maintains that "it is impossible … at a time when all the neighboring nations are … ferocious wolves … that only Israel … refrain from fighting. … On the contrary; it is obligated … to terrify the savages even through cruelty." But that sort of behavior is not permanent "Jewish morality"; it merely reflects the way in which Israel confronted the situations and challenges it faced at the time. It is true for its time and place, but is not true in other times and places. It is a mistake to turn biblical behavior into fixed moral principles, for doing so fails to understand the vision of human morality embodied in the Torah.

The extent to which the authors of *Torat ha-melekh* have given up on Unity of Opposites is sharply conveyed by Rabbi Yoel Bin-Nun. In his view, *Torat ha-melekh* is pseudo-halakhic prattle originating in the thought of Rabbi Ginsburg, who means to create an alternative to the thinking of Rabbi Kook. The only thing favorable that can be said about the book, Rabbi Bin-Nun suggests, is that it nowhere quotes Rabbi Kook, thereby making it clear that the authors have entirely abandoned his ideas. (Finkelstein's discussion, in contrast, contains numerous references to Rabbi Kook.)

Before concluding my remarks, let me say something about what I regard as the real but limited affinity between *Torat ha-melekh* and the theories of Rabbi Meir Kahane. Within the community of *Torat ha-melekh* advocates one certainly finds statements, similar to Kahane's theories, that utterly reject secularism and see no redeeming features within it. One also finds statements that view the State (that is, the true Jewish State, as distinct from that of secular Zionism) as the flowering of our redemption, moving toward a certain future that should be promoted without hesitation. In addition, *Torat ha-melekh* circles are marked by pronounced withdrawal from Western culture, demonization of the "other" (whether secularist or gentile), and notions of Jewish superiority—again, ideas resembling familiar Kahanist notions. Moreover, both doctrines include praise for power as a divine quality and for war between Israel and the other nations. But all that said, I nevertheless believe the resemblance between the two theories is limited. The Holocaust, for example, which played a central role in Kahane's arguments, goes unmentioned in *Torah ha-melekh* circles. The latter cast their lot with the "authentic" moral obligations of the Torah, which are to be applied to contemporary life in Israel. Moreover, in *Torah ha-melekh* circles, denying the rights of gentiles is not a goal on a par—as it is in Kahane's theories—with the return of Israel to its land.

Torat ha-melekh is less Kahane redux and more an antithesis to the Unity of Opposites. It offers a absolutely opposed alternative to Rabbi Kook's "covenant of destiny" and to the "Torah of the Land of Israel" he refers to in his writings, which are grounded in the idea of inclusiveness. *Torat ha-melekh*, in contrast, attempts to construct an argument based on recognizing the depth of the "covenant of fate" that is the essence of Zionism; the collapse of Rabbi Kook's pacifist utopia; the endless wars over the existence of the State of Israel; and the confrontation with Arab terror. Taking account of all those factors, it maintains that one must uncover the authentic, anti-Diaspora "covenant of destiny" of the Torah of the Land of Israel. That covenant of destiny requires a return to "biblical" moral principles, which affirm Israel's superiority over other nations; a deepening of the ontological and moral chasm between them; liberation from Western morality; adherence to what is regarded as "halakhic" morality. That, from the perspective of *Torat ha-melekh*, is the Torah of the Land of Israel that is meant to replace Rabbi Kook's. Its public power is built on its abandonment of utopia and theory in favor of commitment to dealing with the moral reality that bears on the performance by IDF soldiers of their daily duties. It sees itself as a doctrine that blends, in a manner more realistic and more grounded in the Torah, the contemporary Jewish "covenant of destiny" and "covenant of fate." That is one of the reasons for the book having been accepted by hundreds if not thousands of readers and for the polemics and tension generated in the army, in the media, and in the courts following the effort to introduce the book into synagogues on IDF bases.

The book's non-theoretical approach is expressed in Rabbi Dov Lior's laudatory comments: "This is an area that is quite realistic. Especially at a time in which Israel is returning to its Land, it is necessary to know the position of true Jewish *halakhah* regarding every abnormal situation in which we find ourselves. This provides the right direction and a true perspective on the events and on how to deal with them." In that same spirit, Rabbi Ginsburg writes: "I was happy to see your book. … These issues are highly pertinent to our situation today in the Land of Israel, when we are obligated to conquer it from our enemies. In order to act in the proper manner, consistent with the spirit of Torah, and in order to strengthen the spirits of the nation and its soldiers, one must clarify in depth the views of the Torah on these matters.

We thus see that *Torat ha-melekh* is a contrarian book *vis à vis* the theology of Unity of Opposites. Its contrarian nature appears against the background of a crisis in Religious Zionism pertaining to theology, religion, politics, and identity. Its

formalistic halakhic writing serves as a cloak to conceal meta-halakhic arguments related to the relationship between morality and *halakhah*, the metaphysical logic of kabbalah as taught by Rabbi Ginsburg, a theology of power having some Kahanist overtones, and a political philosophy produced by the Price Tag group.

The book's critics have revealed these meta-halakhic inclinations and pointed to deviations and failings in the authors' understanding of halakhic texts. But the process of doing so appears to be only in its early stages, and the uncovering of the book's implicit theoretical and kabbalistic premises will likely accelerate as its authors and their colleagues produce more such writings. The book *Torat ha-melekh*, therefore, is just the opening sally in a new halakhic and theoretical battle within the world of Religious Zionism and we now have only a preliminary understanding of its implications.

Dr. Avinoam Rosenak is head of the Department of Jewish Thought at the Hebrew University in Jerusalem and research fellow in the Van Leer Institute in Jerusalem. His field of research is Modern Jewish Philosophy and the Philosophy of the *Halakhah*. His books: *The Prophetic Halakhah: Rabbi A.I.H. Kook's Philosophy of Halakhah*, Magnes 2007; *Rabbi Kook,* Zalman Shazar publication 2006; *Halakhah as an Agent of Change: critical Studies in Philosophy of Halakhah*, Magnes press, Jerusalem 2009; *Cracks: Rabbi Kook, his disciples and theirs critics*, Resling publication, (in press). Rosenak edited five academic books at Magnes Press, Van Leer institution, Zalman Shazar Institute and The Israel Institute for Democracy.

Jeffrey Rubenstein (Session 4B)

Dr. Jeffrey L. Rubenstein is the Skirball Professor of Talmud and Rabbinic Literature in the Skirball Department of Hebrew and Judaic Studies of New York University. He received his B.A. in Religion from Oberlin College, his M.A. in Talmud from the Jewish Theological Seminary, and his Ph.D. from the Department of Religion of Columbia University. He is the author of *The History of Sukkot in the Second Temple and Rabbinic Periods* (1995), *Talmudic Stories: Narrative Art, Composition and Culture* (1999), *The Culture of the Babylonian Talmud* (2003), and *Stories of the Babylonian Talmud* (2010).

Chaim Saiman

Chaim Saiman (Villanova Law School) – Talmudic Analytics and Ethical Thought: A study of Jewish law of the Worker's Wages as an argument for Neo-Lamdanut (session 10A)

To some, the classical Talmudic tradition—typified by its intellectual and methodological insularity and its unshakable commitment to the details of observance—represents the essence of authentic Judaism. Others Talmudic legalism too narrow a prism through which to view the Jewish experience and developed a more humanistic tradition thus places greater emphasis on the Bible; classical and medieval- philosophy; *midrash* and *aggadah*; liturgical and historical works; and modern Hebrew literature. The result of this bifurcation however, is that serious engagement with the substantive content of halakha has remained the exclusive province of the classical talmudists. This paper rejects this dichotomy. Using the biblical prohibition of withholding a worker's wages and the correlative Bavli *sugya* as a case study, I propose an alternative approach to conceptualizing Talmudic dialogue termed "*neo-lamdanut.*" In line with the classical halakhic tradition, neo-*lamdanut* delves head first into the give-and-take of Talmudic discourse. At the same time, 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 halakha that explicitly articulates the goals and methods of rabbinic halakhot, and explains the centrality of halakhic study in Jewish life and thought.

Chaim Saiman, a professor of law Villanova Law School, works in the areas of comparative private law and Jewish law. He is currently working on a book titled, HALAKHA: THE RABBINIC IDEA OF LAW which analyzes the relationship between legal doctrine, philosophy and theology in Jewish law and culture and is to be published by Princeton University Press. Chaim serves as the Jewish Law Editor for the JOURNAL OF LAW AND RELIGION, and in 2012-13 will be the Gruss Visiting Professor of Jewish Law at the University of Pennsylvania Law School, and a fellow-in-residence at the Madison Program in American Ideals and Institutions at Princeton University. Prior to teaching at Villanova, Chaim served as an Olin Fellow at Harvard Law School, a Golieb Fellow in legal history at NYU Law School, and as a law clerk to Judge Michael McConnell on the Tenth Circuit Court of Appeals. <chaim.saiman@gmail.com>

Lena Salaymeh

Lena Salaymeh (UC Berkeley School of Law) and Zvi Septimus (University of Toronto) – Marriage for sex in medieval Jewish and Islamic legal debates (Session 5C)

Recent studies have explored the relationships between Zoroastrian and Rabbinic practices pertaining to temporary marriages. We seek to augment this scholarship by investigating and by juxtaposing Jewish and Islamic juristic debates about temporary marriages. This particular doctrinal issue is known for its divisiveness along Muslim sectarian lines (with Sunnīs opposing it and Shīʿīs accepting it), but it is not clearly known how Gaonic rabbis negotiated a topic that was being debated around them. For example, in marking temporary marriages as illegitimate, did Saʿdīya Gaon offer an interpretation of the Bavli that roughly corresponds to broader social understandings of "orthodox" marriage among orthodox, contemporaneous Muslims? We will offer a chronological exploration of legal discussions of "temporary marriages" (or casual sex) in the Bavli, among Gaonic figures, in Islamic juristic texts, and in the writings of the Rambam. We propose to examine rabbinic and Islamic sexual ethics through the issue of conceptions of marriage.

Lena Salaymeh is Robbins Post-Doctoral Fellow at the UC Berkeley School of Law. She earned her PhD in legal history from UC Berkeley and her JD from Harvard Law School. Her article on wife-initiated divorce in Jewish and Islamic legal history is forthcoming in the *UC Irvine Law Review*. <lenas@law.berkeley.edu>

For Zvi Septimus, see below

Tamar Salmon-Mack

Tamar Salmon-Mack (Ariel University Center and Schechter Institute), "The influence of the Polish private law on precedence in debt collection and *ketuba* collection customs in early modern era Polish communities" (3A)

One of the issues debated and deliberated by rabbis and community organizations was the financial rights of widows as opposed to those of creditors, when an estate is insufficient to meet the claims of both parties. Regarding real estate, the Shulchan Aruch favors the party to whom the obligation was made first, and regarding chattels, creditors would have priority – in order not to disrupt the commerce and loans market. On the other hand, an examination of the regulations of the "Council of Four Lands" in 17th century Poland, and the reasons for the enactment of these regulations, reveals that some Jewish communities there had different local customs, specifically favoring the widow. A comparison with Polish private law shows that it was evidently the source of these exceptional customs, and this facet of Polish law began to appear in the privilegia granted to Jews by various rulers. The earliest such instance is a Polish royal decree from 1571. The importance of this development lies in the clear evidence of the influence of Polish law on this issue, contrary to accepted halachic practice. Furthermore, this is one of the few matters in which Polish Jewry differed from Ashkenazi customs.

Tamar Salmon-Mack (Ph.D. Hebrew University, 2002) was born and lives in Jerusalem. She is married and has 3 sons. She teaches at Ariel University Center, David Yellin Academic College of Education and Schechter Institute of Jewish Studies. She has recently published *Marriage and its Crises in Polish-Lithuanian Jewry, 1650-1800* **(**Heilal ben Haim Library, Hakibbutz Hameuhad). Her current research is focused on family life in Ashkenazic and Eastern-European Jewry and other social aspects of Jewish life during the pre-modern era, as reflected in communal, folk and Rabbinic literature of the period.

Shana Strauch Schick

Shana Strauch Schick (Bar-Ilan University) – Aristotelian Ethics and Corrective Justice in the Rulings of Rava (Session 4C)

Rava, the prominent fourth-generation Amora, instituted a significant development to the theory of tort law in the Bavli. Prior rulings from the earlier generations of Amoraim consistently apply the principle of strict liability to tortfeasors, wherein intention

plays little or no role in determining guilt. Remarkably, however, Rava innovated a requirement of intention in order to render liability for both civil and ritual violations. Furthermore, he carved a distinction between damages caused through negligence and those resulting from intent, and assigned corresponding degrees of liability. Similarly, within the realm of ritual law he exempted those transgressions which result not from any malicious intent, but from mere physical desire.

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.

Shana Strauch Schick is a Post-Doctoral Fellow at Yad Hanadiv's Jewish Culture in the Ancient World Program at Bar Ilan University and a fellow of the Legal Theory and Jewish Studies Research Seminar at the Van Leer Jerusalem Institute. She recently completed a doctorate in Talmud from Bernard Revel Graduate School at Yeshiva University where she also received an MA in Bible. Her dissertation, "Intention in the Babylonian Talmud: An Intellectual History," traces how the concept of intention was conceptualized and evolved in the legal reasoning of the Babylonian Amoraim. While working toward her doctorate she completed the Graduate Program in Advanced Talmud at Stern College, where she continued to study and teach for several years.

Zvi Septimus

Zvi Septimus (University of Toronto) and Lena Salaymeh (UC Berkeley School of Law)– Marriage for sex in medieval Jewish and Islamic legal debates (Session 5C)

Zvi Septimus is Anne Tanenbaum post-doctoral fellow at the University of Toronto. He was formerly Alan M. Stroock Fellow for Advanced Research in Judaica at Harvard University and received his PhD in Jewish Studies (Talmud) from UC Berkeley. For the abstract, see the entry for Lena Salaymeh, above.

Haim Shapira

Haim Shapira (Bar-Ilan University), Jewish Courts under Roman Rule: The Tannaitic Evidence (Session 6B)

What was the nature and structure of the Jewish judicial system in the land of Israel under Roman rule? Was there a "national" judicial system with hierarchic structure (headed by the Patriarch and the Central Court) or only individual judges dispersed in the Jewish communities around the country? Where there permanent courts that could enforce there verdicts upon the parties or only private courts that were respected by parties that selected them? Historians and Jewish-law scholars are divided among themselves on this issue for more than a century. Progress was made when scholars began to distinguish between normative texts and historical evidence. Following this distinction, historians attempted to find historical evidence either within rabbinic literature or beyond it in order to answer these questions. In this paper I return to the normative texts, focusing on the tannaitic literature, attempting to explore the rabbinic view about the nature the judicial system. Does Tannaitic literature reflect the existence of institutional judicial system? Does tannaitic law demand or assume permanent courts holding coercive power or private courts that were selected by the parties?

Dr. Haim Shapira is a member of the faculty of law at Bar-Ilan University, where he teaches Jewish law and Jurisprudence. He received his Ph.D. from the Hebrew University of Jerusalem (2002), where he studied law and Jewish studies. He was a fellow of the school of social science at the Institute for Advanced Study in Princeton USA (2005-6). Among his recent publications are: "'For the Judgment is God's' – Human Judgment and Divine presence", Bar-Ilan Law Review (2010); "Majority Rule in the Jewish Legal Tradition", Hebrew Union College Annual (forthcoming).

Yaakov Shapira

Yaakov (Kobi) Shapira (Hebrew University of Jerusalem) – The Couple's Place of Residence – Society, Religion, and Halaka (Session 14A)

My lecture will treat the question of the couple's place of residence. 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 (b. Bna Bathra 98b). In my lecture I will address the different positions expressed in the halachic sources on this subject. I will discuss whether the aforementioned position of the Babylonian Talmud - that the couple's place of residence should be that of the groom - was unanimously accepted, or perhaps there are those that ruled otherwise. I will relate to the considerations underlying the various positions, along with the cultural background, and historical circumstances confronting them, focusing on the dispute between Rabbenu Tam and Maharam of Ruttenberg. I will also address the position taken by the halachic authorities regarding couple's ability to stipulate conditions regarding their place of residence. The lecture will further examine the manner in which halachic authorities confronted the question of difficulties experienced by one of the spouses in living in the halachically prescribed location.

Yaacov Shapira took his first degree in Law at Bar-Ilan University and his master's degree in Law (cum laude) at the Hebrew University of Jerusalem, where he went on to complete a Doctoral Thesis on the Child-Parent Relationship in Jewish Law as a case study in Family Law as a social and a religious instrument. The thesis deals with the status of parents and with children's obligations towards them, in the light of cultural and historical influences. He Clerked for Supreme Court Justice (Ret.) Zvi Tal, and is currently teaching at the Hebrew University and Sha'arei Mishpat Academic College. He also has a position in the Jewish Law department in the Ministry of Justice and in the course of his work has written legal opinions on the position of Jewish Law in a variety of areas, for the Jewish Law Department of the Ministry of Justice. <shakobi@gmail.com>

Yosi Sharabi

Yosi Sharabi (Bar-Ilan University) – Rabbinical Courts Administration in an Oppositional Social and Juridical Environment — Three Approaches (Session 14B)

The Rabbinic Courts in Israel act in a secular and liberal society, whose values have a huge influence on the perception of the institution of marriage. One manifestation of this approach is the unilateral right to claim for divorce, which is espoused in no-fault divorce regime countries. Claims for domestic peace therefore, are apparently in contrast to this perception, and judges in the Rabbinic Courts have developed three different approaches to deal with these claims, which represent the main ways of dealing with such contradictions in general : A. The confrontational approach. A conservative religious ruling in line with the basic principles of the Halakhic legal system, which strives to implement them unaltered, in the current social reality; B. The contraction approach. Limiting the use of the authority of the Rabbinic Courts to the legal core, while abandoning the religious aspects related to marriage, with the understanding that one cannot force a religious conception of law on a secular lifestyle; C. The pragmatic inclusive approach. A selective and cautious reception of legal arrangements from the general law, as adjusted to known religious institutions.

Yosi Sharabi was a PhD. student, Faculty of Law, Bar-Ilan University, 2009-2012. The topic of his dissertation was "Domestic Peace - Judicial Intervention in Resolving and Preventing Domestic Crises, in Jewish and Israeli Law". He has Accreditation as a Dayyan from Chief Rabbinate of Israel, 2002 and served as a Dayyan in the local Rabbinic Court of Mamonot, Kdumim, 2001-2012. He was a Researcher in the Yishma Center (Contemporary applications of Jewish Law), 2005-2011 and a Young Researcher in the project on Human Rights and Judaism of the Israel Democracy Institute, 2012. <yosishar@gmail.com>

Benjamin Shmueli

Benjamin Shmueli (Bar-Ilan University), A Preliminary Sketch of a Modern Model of Differential Pluralistic Tort Liability based on the Theories of Maimonides and Calabresi (session 12B)

This paper aims at presenting a preliminary sketch of a modern model of differential pluralistic tort Liability based on the different-but-similar theories of Maimonides and Honorable Prof. Calabresi. Analysis of the theories of Calabresi and Maimonides produces a better understanding of their theories of tort liability, of each one separately and of the advantages and disadvantages of each one relative to the other. On one hand, the paper uses Calabresi's modern, coherent, well-argued, and detailed theory to elucidate many of Maimonides's rules, which are naturally formulated in less modern terms and are naturally are less well suited to modern reality. Maimonides's rules often lack a clear and detailed argumentation, which is why they pose significant difficulties if interpreted according to the traditional commentary. On the other hand, Maimonides's unique tort theory challenges even Calabresi's and mirrors it. Calabresi's theory is instructive and well-suited for the modern reality of the industrial world (which did not exist in ancient times) in which most of the claims are directed against large manufacturers, economic institutions, mass tortfeasors, and their insurers. Nevertheless, there is still a need to inject some degree of deontological considerations into Calabresi's theory, in the appropriate case.

An applicative model that contains an outline of a theory of torts inspired by the writings of Maimonides and Calabresi will be presented. This is an initial outline of a pluralistic model of liability based on the integration of considerations of efficiency and justice, granting precedence to each consideration depending on the type of activity creating the risk. This model of differential tort liability is based on Calabresi's "best decider" doctrine, but in conjunction with liability that is not always absolute, rather mixed with fault and at times fault-based, according to Maimonides' suggested categorization of tort events into groups. In the outline of the model the paper allows greater dominance to strict liability that is not fault-based in the case of insured defendants and which are loss distributors, and greater dominance to a fault-based regime in the case of individual, uninsured tortfeasors. The division to be presented could be justified not only because of the need to incorporate deontological considerations into the system, especially toward uninsured private tortfeasors; it can be justified also for reasons of efficiency, which do not always (or in every case) justify the imposition of strict liability on an individual, uninsured best decider because it may result in over-deterrence and in a disincentive to engage in certain activities.

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Yaron Silverstein

Yaron Silverstein (Zefat Academic College) – Between 'Halacha without Borders' and 'Borders without Halacha': Aspects of Private International Law in the rabbinical courts (Session 14B)

The Jew, it was said a generation ago, carries with him his personal Law wherever he go. This international character of Jewish law worked during long years of exile, and helped to define effective Jewish law in every Jewish community. When a spouse escaped from his community to another, he didn`t get some `New Life` and defense from the new community. He continued to be under the legal authority of his parent community. In this way, Jewish law turned the Jewish world into a one global community. The jurisdiction in matters of personal status in the rabbinical courts in Israel, however, changed this position in the international context. If in the past it was said that Jewish law does not recognize borders and trials of other countries, today the assumption is that we have to enable, within the framework of Jewish law, space and status for trials in foreign countries. In this lecture we will review the development of the field of private international law within Jewish law in the context of family law, and point out the directions of development of this legal area in the recent years.

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Yuval Sinai

Yuval Sinai (Netanya Academic College), Calabresi and Maimonides: Is It Possible to Conduct a Dialogue Between the Tort Theories of the Two? (Session 12B)

Is it possible to create a virtual encounter and dialogue between two great jurists who each developed a comprehensive and coherent theory of law in general and tort law in particular, Prof. Guido Calabresi, and the "Great Eagle," Rabbi Moshe Ben Maimon (Maimonides)? Careful comparison of their original and fundamental positions on the law of torts leads to interesting discoveries.

Are the two methods compatible? The obvious answer appears to be negative, as the two individuals are miles apart in time and space, geographically, and mentally-culturally: one is a contemporary, well-known professor at the Yale Law School and former Dean, a senior judge on the U.S. Court of Appeals for the Second Circuit, and one of the founding fathers of the (tort) law and economics approach; the other is a rabbi, physician, and philosopher, one of the great scholars of Halakha and Jewish philosophy of all times, who lived eight hundred years ago in Egypt.

The choice of Calabresi and Maimonides is based on the fact that they both present a broad, systematic, coherent, and rational theory of torts, and the two theories are intended to express the basic approach to economic analysis in modern tort law (Calabresi) and the most comprehensive systematic-doctrinal theory in Jewish tort law (Maimonides).

From the point of view of the theory of tort law it may be assumed, given the considerable differences that exist between the main economic analysis of law and the conventional approach to tort law in Jewish law, that Calabresi and Maimonides present entirely different positions regarding the elements of tort liability. But the analysis of the dialogue between Calabresi and Maimonides produces better understanding of their theories of tort law, each one separately. At the same time, it also yields results that most likely were not known to date, and careful comparison of their writings reveals a striking similarity between the basic tort theories of the two.

Nevertheless, together with pointing out the meeting points between the tort theories of Calabresi and Maimonides, the paper also indicates the significant differences between them. These differences follow from the different and at times conflicting positions of Jewish law on one hand, and the modern law and economics on the other regarding tort law in particular and in relation to law, morality, and justice in general. Maimonides's approach is presented from a doctrinal-theoretical perspective, and lesser emphasis is placed on the historical aspects of the development of Jewish tort law and on the practical aspects relating to individual rulings. This is because this paper's primary goal is to compare analytically the tort theories of two.

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Daniel Sinclair

Daniel Sinclair (Striks CMAS Law School and Fordham University) – The Moral Image of Jewish Law as a Factor in Halakhic Decisions (Session 10A)

This paper explores different ways in which the sensitivity of commentators and *poskim* to the moral image of Jewish law in non-Jewish eyes expresses itself in their halakhic analyses and legal decisions. It aims to highlight two expressions of this sensitivity i.e. the deliberate modification of the *halakhah* in order to bring it into line with non-Jewish morality, and the use of moral insights drawn from non-Jewish sources in order to complement halakhic doctrine at the meta-legal or ideological levels. In both cases, the result of turning to non-Jewish morality may either be a leniency or a stricture. The examples discussed in the paper are drawn

mainly from the areas of biomedical *halakhah* i.e. feticide, assisted reproduction and delayed burial, and ritual law i.e. wearing sha'atnez and synagogue decorum. In the biomedical context, the notion that *halakhah* ought not to bring itself into disrepute by ignoring or contradicting a current scientific consensus also figures in the discussion. Finally, the paper also deals with a number of instances in which non-Jewish morality is cited as a source for emulation by Jews.

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Ari Solon

Ari Marcelo Solon (University of São Paulo Law School) – Bernard Jackson's Philosophy of Jewish Law (Session 13)

"Lo min hashamain" (it is not from Heaven) is the lesson of the Tanur Oven and is also the essence of Jackson´s Realistic Philosophy. This paper aims to discuss the Bernard Jackson´s philosophy of halacha, casting light important aspects of his consolidated thoughts and also proposing a few speculations about them. In his writings, Jackson proves that Mishpat Ivri (i) is not a unified system, and (ii) that the system is not based on any unique, authoritative source of law. He combats this positivistic model of modern orthodox Halachic thinking using religious models. Jewish Law is the rule of men, not the rule of law. It is the governance of men who were regarded originally as divinely inspired. Jackson provides a critical realist position that doesn't reduce Halacha to a positivist notion of legal system. He doesn't follow the conservative approaches, whose theoretical base is C.F. von Savigny´s historische Rechtsschüle. His theory is the essence of halacha presented by Soloveitchik: "the halakhah is the means by which life on this earth, in this world, may be perfected, such perfection being defined not merely in social or utilitarian terms, but rather holistically, incorporating both spiritual and aesthetic dimensions."

Ari Marcelo Solon is an Associate Professor of Philosophy of Law at the University of São Paulo Law School. He has been a member of the Jewish Law Association since 2000 and also of the Brazilian Institute of Philosophy. He has written books o *Dever Jurídico e Teoria Realista do Direito* (Juridical Duty and Realistic Theory of the Law), *Teoria da Soberania como Problema da Norma Jurídica* (The Theory of the Sovereignty as a Problem of the Juridical Norm), *Direito e Tradição: o legado grego, romano e bíblico* (Law and Tradition: Greek, Roman and Biblical legacy) and numerous articles on legal philosophy, general theory of law, state theory and semiotics of ancient law systems. His intellectual interests also range from political theology and ancient justice to specific topics in the areas of Greco-Roman rhetoric, Christian exegesis, philosophic hermeneutics and Jewish Law, such as "just war" and the Covenant Code, as well as competition law in the Middle Ages.

Jacob Weinstein (Session 2)

Jacob Z. Weinstein , J.D. Touro College Jacob D. Fuchsberg Law Center, 2011. Bachelor of Talmudic Letters, Yeshivat Bais Yisroel, 2007. Mr. Weinstein received Rabbinic Ordination from Rabbi Zalman Nechemia Goldberg a noted Talmudist and *Dayan* in Jerusalem, Israel in 2007. He is licensed to practice law in New York and New Jersey and is a Staff Attorney at Pomerantz Haudek Grossman & Gross LLP. Mr. Weinstein's paper, Bribery in the Judiciary: Rethinking Recusal and Judicial Elections in the wake of Caperton v. A.T. Massey Coal Co.: A Jewish Law Perspective, is published in the Touro Law Review 28 Touro L. Rev. 519 (Spring 2012). The focus of this paper is one of comparative law and critique. It compares the United States law and ABA Model Code of Judicial Conduct with the Jewish laws regarding bribery, resulting in an analysis ultimately based upon Jewish law and common sense instead of a review of constitutional doctrine. Part I discusses the Model Code, relevant case law and statutes, and a United States Supreme Court decision discussing the effect that donations to an election campaign had on the recusal of a duly elected judge. Part II introduces the reader to the Jewish laws of *Shochad* and shows how the Jewish laws of bribery are far more extensive than those currently in existence in the United States. This introduction to *Shochad* discusses the Jewish law of bribery with regard to the judiciary from the Torah, Talmud, and modern day application. Part III illustrates the relevance of these

Jewish laws to non-Jews by applying the Seven Commandments of Noah, specifically, the commandment relating to the establishment of a judicial system by the non-Jewish nations. Finally, Part IV concludes with suggestions for tempering the improper effects on the judicial system resulting from judicial elections and campaigns. <jzweinstein@pomlaw.com>

Avishalom Westreich

Avishalom Westreich (Academic Center of Law and Business) – A Newborn Halakhic Institution: Civil Marriage in Jewish Law (Session 9B)

The status of civil marriage is controversial in Jewish Law. Some argue that it creates halakhic marriage (as this marital relationship is considered *kidushey bi'ah*) and its dissolution requires a *get*. Others dispute. Monetary rights usually are not recognized, even according to the former (but by different halakhic routes, e.g., custom of the state). An innovative verdict was recently issued by the High Rabbinical Court of Israel, creating a fascinating legal construction. According to the HRC, Jewish marriage has two dimensions: the universal (Noahide) marital bond, and the unique religious aspect (*kiddushin*). Civil marriage has the first universal dimension, and is valid for Jews as well. The laws applied for civil marriage accordingly are civil laws, with no need of a *get*. Some claim that this innovation was mere politically oriented rhetoric, without any real halakhic implication. I, however, argue (in somewhat legal-realistic view, rather than formalistic or critical) that while indeed influenced by policy considerations, it nevertheless is part of a real and honest halakhic discourse. From this perspective I analyze the verdict's implications for later rabbinic writings, indicating its acceptance, as reflected in the spouses' expanded monetary rights and in the application of no-fault divorce in civil marriage.

> Avishalom Westreich is an Assistant Professor at the Academic Center of Law and Business, Ramat Gan, Israel. During 2007-2008 he was a Postdoctoral Research Fellow at the *Agunah* Research Unit of the University of Manchester, and a Visiting Lecturer at Leo Baeck College in London. In 2008-2009 he was a Lady Davis Postdoctoral Research Fellow at the Hebrew University Faculty of Law. Dr. Westreich was awarded his Ph.D. on "The Talmudic Theory of Torts" from Bar-Ilan University (2007), and holds degrees in Hermeneutic Studies (M.A. Summa Cum Laude), Law (LL.B.), Talmud (B.A.), and Jewish History (B.A. Summa Cum Laude). His current main research and teaching areas are Jewish Law, Family Law, and the Philosophy of Law. He deals in particular with the halakhic and civil solutions to the *Agunah* problem. <avishalomw@gmail.com>

Ethan Zadoff (Session 2)

Ethan Zadoff is a doctoral student in the Department of History at the Graduate Center of the City University of New York. His dissertation, entitled *Therefore a man shall leave his father and mother and be joined to his wife:' Medieval Jewish Marriage law in Northern France and Germany in Comparative Perspective, 1140-1234***,** studies the development of Jewish marriage law and practice (*Hilkhot Erusin ve'Nisuin*) in Ashkenaz during the twelfth and thirteenth centuries in comparative perspective with the regnant Church law and prescribed practice. Ethan received a BA in Jewish Studies and History from Yeshiva University and an MA in Medieval Jewish History from the Bernard Revel Graduate School. He is an adjunct professor in the department of Hebrew Studies at Hunter College, and serves as the Coordinator of Academic Fellowship Programs at the Center for Jewish History. Ethan has a forthcoming article titled "England and the Talmudic community of medieval Europe," and is a co-editor of the forthcoming volume titled *Jews in the Legal Profession.*