

EMERGING APPLICATIONS OF JEWISH LAW IN AMERICAN LEGAL SCHOLARSHIP, PART II: A PREFACE

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This issue of the *Journal of Law and Religion* presents the second part of a symposium dedicated to the project of exploring emerging applications of Jewish law in American legal scholarship. The first part of the symposium, published in the previous issue of the *Journal*,¹ represented an important development in the growing field of Jewish law in the American legal academy. The issue focused on the innovative approaches of two American law professors, Adam Chodorow, who considered the potential relevance of Jewish law to American tax law,² and Chaim Saiman, who applied Jewish legal theory to contemporary discussions of the place of religion in American legal discourse.³ In addition, the issue included thoughtful comments by two leading American scholars of law and religion, Kent Greenawalt and David Skeel, who addressed both the value and the possible limitations of efforts to draw upon Jewish law to illuminate areas of American legal thought.⁴

Building on these and other contributions to the field, the current issue of the *Journal* expands the scope of the project in at least two significant respects. Substantively, the articles in this issue address a subject that has been relatively underdeveloped in the literature, the application of Jewish legal thought to areas of American commercial law. Moreover, the articles are authored by a professor of economics and an Israeli law professor, respectively, thus providing perspectives beyond those of American law professors, while incorporating both an

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1. See Samuel J. Levine, *Emerging Applications of Jewish Law in American Legal Scholarship: An Introduction*, 23 J.L. & Religion 43 (2007-08).

2. See Adam S. Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, 23 J.L. & Religion 51 (2007-08).

3. See Chaim Saiman, *Jesus' Legal Theory—A Rabbinic Reading*, 23 J.L. & Religion 97 (2007-08).

4. See Kent Greenawalt, *The Implications of Protestant Christianity for Legal Interpretation*, 23 J.L. & Religion 131 (2007-08); David A. Skeel, Jr., *What were Jesus and the Pharisees Talking about when they Talked about Law?*, 23 J.L. & Religion 141 (2007-08).

interdisciplinary and an international component.

Aaron Levine, the Samson and Halina Bitensky Professor of Economics at Yeshiva University, applies his pioneering work in economic analysis of Jewish law⁵ to consider the problem of asymmetric information between the buyer and seller. Levine's article, *Aspects of the Lemons Problem as Treated in Jewish Law*, illustrates the way "Jewish warranty law counteracts the lemons problem"⁶ and concludes that "Jewish warranty law is generally far more consumer-friendly than American law."⁷ In *Oppressive-Exploitative Contracts: A Jewish Law Perspective*, Shahar Lifshitz, a Senior Lecturer on the Faculty of Law at Bar-Ilan University in Israel, aims to "enrich the modern Western discussion"⁸ of oppression and unconscionability through an analysis of Jewish law, which offers "an approach which is both unique and . . . largely neglected by scholars in the area."⁹

Notably, both authors engage in a thorough and faithful discussion of Jewish law on its own terms, demonstrating possible insights that can be applied to issues in American law. At the same time, each author acknowledges differences between the Jewish legal model and the American legal system, thus recognizing potential objections to the validity and effectiveness of applying Jewish legal doctrine to American legal principles. Ultimately, notwithstanding these differences, both authors derive generally applicable lessons from Jewish law, which they carefully consider in the context of other legal systems as well.

For example, Levine "demonstrate[s] that all of the mechanisms that countervail the lemons problem require the operation of an environment of trustworthiness to be effective."¹⁰ Furthermore, "[t]he goal of creating an environment of trustworthiness takes on aspects of a pure public good and is an expenditure on basic, as opposed to, applied, research."¹¹ Thus, he explains, "[f]ostering trustworthiness is . . . a form of social capital, and government investment to foster this environment is consistent with economic efficiency."¹²

5. See e.g. Aaron Levine, *Case Studies in Jewish Business Ethics* (Ktav Publ. House 2000); Aaron Levine, *Economic Public Policy and Jewish Law* (Ktav Publ. House 1993).

6. Aaron Levine, *Aspects of the Lemons Problem as Treated in Jewish Law*, 23 J.L. & Religion 379 (2007-08).

7. *Id.* at 422.

8. Shahar Lifshitz, *Oppressive-Exploitative Contracts: A Jewish Law Perspective*, 23 J.L. & Religion 425, 426 (2007-08).

9. *Id.*

10. *Supra* n. 6, at 424.

11. *Id.*

12. *Id.*

According to Lifshitz, Jewish law “balance[s] between individual rights, solidarity with the other, and sensitivity to long-range this-worldly consequences.”¹³ Similarly, he observes, “[t]he desire to incorporate individualism, moral solidarity, and utilitarian considerations characterizes the new turns in contemporary legal thought.”¹⁴ Therefore, in a fitting characterization of his project, representative of the emerging field of Jewish law in American legal scholarship, Lifshitz concludes that “the Jewish law doctrine . . . may serve as an important and intriguing source of inspiration for modern lawmakers.”¹⁵

13. *Supra* n. 8, at 453.

14. *Id.*

15. *Id.*