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JEWISH LAW: FINALLY, A USEABLE AND READABLE TEXT FOR THE NONINITIATE

*Sherman L. Cohn**

A LIVING TREE: THE ROOTS AND GROWTH OF JEWISH LAW. By *Elliot N. Dorff* and *Arthur Rosett*. Albany: State University of New York Press. 1988. Pp. xv, 602. Cloth, \$49.50; Paper, \$19.95.

Why would anyone not studying religion be interested in Jewish law? It will be surprising for some to learn that some twenty to twenty-five law schools now offer courses in Jewish law. The literature in English is growing year after year. And the area is becoming one of serious study for scholars of law as distinguished from scholars of religion.

Jewish law as taught in secular law schools is not that of religious ritual. It is the law of contracts, torts, damages, property, secured transactions, civil and criminal procedure, legal ethics, and consumer protection. In other words, it spans the entire gamut of civil, as distinct from religious ritual, law.

Jewish law begins with the old Testament of the Bible, particularly the Five Books of Moses, which contain much of civil and criminal law. The Five Books of Moses — Genesis, Exodus, Leviticus, Numbers, and Deuteronomy — provide an outline of a society in which the children of Israel were to live when they arrived in the land of Canaan. For example, they were told how to differentiate one person's real property from his neighbor's; what acts would lead to civil liability; how to measure damages in a personal injury suit; rules of dealings between employer and employee; and what evidence is needed to convict one of a crime. It is not surprising that persons living in an organized society 3000 years ago would be concerned with these issues. But it is surprising to some that these matters are discussed and the rules set forth in the Bible.

The Bible, however, is only the beginning of the Jewish legal literature. In addition, there are the Talmud (consisting of the Mishnah and the Gemara) and other books of legal decisions redacted around 1500-2000 years ago. And there are the literally tens of thousands of court decisions known as *responsa*, accumulated over the past 1500 years. Moreover, the literature contains several comprehensive codes that attempt to compile and reconcile the legal literature extant when

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each was written. These comprehensive codes were written by such persons as Maimonides (twelfth century) and Joseph Caro (sixteenth century). Finally, the literature contains other significant writings on particular areas that do not purport to be complete codes.

The recent interest in this subject in the United States has resulted in more and more translations into English and in other efforts to make this subject accessible to those who work in the English language. *A Living Tree* by Dr. Elliot N. Dorff and Professor Arthur Rosett is the latest, and in many ways the best, of these works. It is clearly the most readable and the most usable by the educated nonexpert. And it is the only real teaching tool.

The first comprehensive treatment in a form readable by the uninitiated was George Horowitz's *The Spirit of Jewish Law*, first published in 1953. It presents Jewish law in a Hornbook form and is a valuable first stop in inquiry into particular problems. Professor Aaron Schreiber's *Jewish Law and Decision-Making*, published in 1979, is a wonderful scholarly work of significant depth. For the beginner, however, it is a formidable work. Finally, Menachem Elon has edited *The Principles of Jewish Law*, which pulls together the legal pieces from the *Encyclopedia Judaica*. It is a very significant research tool and guide to the literature. The authors are significant scholars in their own right and the individual pieces are of great value. But the pieces are from an encyclopedia and read accordingly. The book is a great research tool but hardly readable as literature.

A Living Tree thus serves a real need: it provides the flow and jurisprudence of Jewish law in an accessible form, providing the uninitiated educated person with a very readable and comprehensible introduction to a fascinating field. Dr. Dorff and Professor Rosett developed this work as teaching material for a course in Jewish law at UCLA. Their audience is the secular law student, generally educated but with no background in Jewish law. For this purpose, the material works very well.

Dorff and Rosett do not attempt to cover the entire area of Jewish law. Rather, their work is a jurisprudential introduction, placing the development and growth of Jewish law in its historical setting. Rather than attempt to cover the entire substance of Jewish law, Dorff and Rosett use material from two areas — personal injury law and the law of divorce and marriage — to illustrate the jurisprudential flow that is the heart of their work. They include original material from the Bible, Talmud, and beyond so the reader can obtain a feel for that material. The reader is not left to grapple alone with the original material, however. The original material is interspersed among a great deal of textual explanation.

Dorff and Rosett also include, by way of comparison, excerpts from California law and their own personal commentary on compara-

tive American law and mores. This is the weakest part of the book and could well have been left out. For the law student or the lawyer, it is unnecessary. And some of the commentary on the contemporary scene will soon be (if it is not already) dated, and at times appears to be shallow and almost flip. Thankfully, these excursions are not too frequent nor too distracting.

Leaving that minor irritation aside, however, it should be recognized that for another reason this book will not be pleasing to all who might read it. While the authors attempt to isolate nonreligious ritual in the study of Jewish law, the attempt is only partially successful. The tradition of Jewish law is inextricably bound up with the thunder and lighting at Mt. Sinai. An acknowledgement that Jewish law has survived and developed over the almost 2000 years when there was no sovereign Jewish state necessarily relies on the role that a belief in a knowing and caring God played throughout this period. And it is in the form of such a God that the law began, whether one starts with the Noahite laws, or the commands to Abraham, Isaac, and Jacob, or with Moses at Mt. Sinai.

To the fundamentalist, the law was in fact given by God to Moses. But to the fundamentalist, the law is not comprised only of the Ten Commandments and the law of the Five Books of Moses, which became known as the "written law." The fundamentalist also believes God gave to Moses the "oral law," which later was redacted as the Mishnah and the Gemarah. Indeed, to the fundamentalist, God is the giver of the law of the Five Books of Moses and all of its interpretation and commentary — wherever thereafter found throughout the tradition of Jewish law.

Dorff and Rosett obviously are not fundamentalists. They discuss the development of the law over time and the process of redaction of the Bible and the Talmud, which of necessity involved excluding as well as including significant amounts of material. They discuss the schools of Jewish law that struggled for different solutions and lost. They also focus on the development and change in the law over the centuries. The picture is one of flow and growth.

This is perhaps the greatest fascination of Jewish law. We begin with the language in Deuteronomy that the Five Books of Moses contains all of the law, and none should be added or subtracted.¹ And, of course, since that law was given by God, who are we, mere mortals, to question and change what God has bestowed? Yet, through 2000 years of altered circumstances and ever-changing geography, change had to and did occur.

It is equally as fascinating to speculate on the force of this law without a sovereign state. How did it continue to operate, to be en-

1. "Do not add to what I command you and do not subtract from it, but keep the commands of the Lord your God that I give you." *Deuteronomy* 4:2.

forced, to grow and to develop when there was no sovereign judge or policeman? To those who have been imbued with the realist jurisprudence of Oliver Wendell Holmes, it is a challenging question. Yet we know that it happened and, to a lesser extent, is still happening.

Related to this subject is the comparative aspect of Jewish jurisprudence. American law is based on a theory of right. Jewish law, on the other hand, is based on a theory of duty. The result is that one person's obligation does not depend upon another claiming the right. When this difference is considered, along with the ever-present context of God-given law and a living God who knows and cares, one can see in Jewish law an approach entirely different from that which is usually taught in American law schools.

It has been my experience teaching Jewish law at Georgetown for the past nine years that these are the questions the students find most intriguing. No one can even attempt to teach the substance of Jewish law in a single course, just as no one could hope to teach the substance of American law in a similar time span. All that can be done in a single course is to open the subject and convey a sense of the development, the flow, the sources, and the jurisprudence. Of all of the books that have been written to date, Dorff and Rosett's book provides the best text to accomplish that goal.

As far as I have been able to ascertain, the first regularly offered course in Jewish law at a secular American law school was taught at Temple University in 1972 by Professor Aaron Schreiber, now at Pace University. The course at UCLA began in 1974, offered initially by Rabbi Ben Zion Bergman and Rabbi David Gordis. Courses at Georgetown and Brigham Young universities began in 1979. While the specific schools offering courses in Jewish law vary from year to year, depending often upon the presence of a qualified and interested teacher, the number is now about twenty schools. One of the great needs has been for good teaching materials. *A Living Tree* supplies that need.

But the book has even greater value. For the reader with little or no exposure to Jewish law who wants to have a feel for the subject, this book is a very good start. It provides an introduction to the subject and a framework for understanding.