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PREFACE

Over the past two years that I have been working on this book, I have repeatedly needed to define bibliography to friends and family with whom I have discussed it. While generally people understand a bibliography as the “works cited” list at the end of their college term papers, they find it hard to conceive of a book-long bibliography, where the bibliography is the main feature rather than an appendage at the end. Law librarians generally have understood the nature of my work-in-progress, but their reactions have been a bit more mixed. Some appreciate the amount of time and work involved, and immediately appreciate its value. Others react with a sense of nostalgia, remembering (sometimes literally, sometimes not) a time when such bibliographies were a staple of the librarian’s work—a time before we were supposedly replaced by search engines and our days were filled up with computer-assisted legal research; a time when we provided support for education and scholarship, not instead of, but beyond fulfilling the day-to-day requests of faculty and students; a time when librarians were provided the time to develop and shape unique collections; a time when we filled the role of a librarian-scholar, adding value to our deep subject knowledge with a unique bibliographic outlook. These librarians recognize the mostly lost art of crafting a comprehensive bibliography. Such bibliographies provide researchers an entrance to a subject area while also curating material in a careful way that a full-text database or meta-data-based index cannot.

There is tremendous value in a bibliography put together by a human, who has combed through the source material, who can recognize otherwise unnoticed features, connections, and trends among the sources, and who can bring that knowledge to the researcher in a carefully crafted annotated bibliography. While such bibliographies are still produced, they are rarer than before. I do not blame librarians for this, nor the institutions that employ us. The pressures of the modern work environment, budgets, faculty expectations, student needs, and simply the amount of time in the day are all root causes of the bibliography’s slow decline. But I do think, as part of the seemingly never-ending conversations among librarians about how we can illustrate our value to the institutions we serve, we can make a better case that librarians provide a unique perspective, a bibliographic perspective, that can play a pivotal role in legal scholarship. We often have deep subject knowledge (in law schools we often share the same terminal degree with faculty), and we bring an outlook to legal scholarship that is

different from that of the practitioner, and different from that of the professor, but no less valuable.

A bibliographic perspective is not merely a wider or broader perspective on source material, although it is that in part. A bibliographic perspective places a higher priority on certain aspects of source material, and integrates those higher priority aspects into a more conventional analysis of source material. For example, a scholar of constitutional law will (or should) be familiar with the make-up of the main body of research in her subject area, and an expert in its substantive content. But a bibliographer's knowledge is the reverse: he or she will be familiar with the substantive content, but an expert in the bibliographic make-up of the body of scholarly literature. The bibliographer will be familiar with how that body of scholarly literature connects to, and might overlap with, other topics. The bibliographer will be more attuned to the historical development of the scholarship, including the contents of journals no longer published, rarely found, or foreign. The bibliographer should have the time and perspective to recognize broader trends and citation patterns in the scholarly literature that might otherwise be missed, and the existence of tangential conversations among scholars on a topic that may well relate back to the main subject area. The bibliographer should easily recognize the scholarship that is essential to a new researcher, and at the same time be able to identify a highly specialized body of literature for the experienced scholar. While the bibliographer must, of course, be familiar with and understand the substantive content of a subject area, all of this is accomplished by focusing more on a subject area's scholarly bibliographic content: who is writing what, in which journal, how often, and over what period of time, who is citing whom, who is criticizing whom, how does the scholarly material develop over time? The scholar seeks a deep understanding of the content of a topic covered by the scholarly literature, while the bibliographic-scholar seeks to understand the bibliographic make-up of that scholarly literature. By providing this bibliographic perspective back to the scholar, the librarian-scholar supports the work of the scholar, and plays an integral role in the scholarly process. At the same time, a bibliographer should also provide the novice researcher an entrance ramp into a body of scholarly literature.

Playing these roles is the purpose of this bibliography, and this bibliographic perspective is provided mainly in the annotations that follow. To that end, some of the annotations below offer a mainly conventional summary of an article's contents, while others include my own editorial commentary, where appropriate. In those annotations, I might assess an article's place in the scholarly literature, its connection to the larger body of scholarship, and its value within that body of scholarship. In a few rare cases, the annotations provide criticism of especially misguided or mis-

leading articles. More often, thankfully, I note when an article is especially interesting, informative, or useful to those researching Jewish law. I also note when an article offers background introductory information about Jewish law or the Jewish legal system that might be of interest generally, beyond the specific topic of the article.¹ The articles and annotations are arranged by topic, in chronological order. A small glossary at the end provides definitions of terms that are commonly addressed in the annotations, and is followed by an author index.

The diverse and complex literature featured below demonstrates that even a small, relatively minor subject of scholarly analysis, such as the subject of this bibliography, Jewish law, comprises a rich and varied literature made up of multiple strands and streams, some connecting to each other, some independent, and some related to areas of treatment beyond Jewish law. I believe that many other areas of legal scholarship are ripe for similar bibliographic scholarship, and despite the obvious limitations on the time of law librarians, I urge them to put their unique skills to work and begin writing such bibliographies.

As Professor Samuel Levine writes in more detail in the introduction below, Jewish law courses, scholarship, and collections have been increasing in frequency and size in American law schools for several decades. Today many law schools house institutes and centers for the study of Jewish law. This bibliography documents the history and content of the

¹ Examples of these include Menachem Elon, *The Sources and Nature of Jewish Law and Its Application in the State of Israel—Part I*, 2 ISR. L. REV. 515 (1967); *Part II*, 3 ISR. L. REV. 88 (1968); *Part III*, 3 ISR. L. REV. 416 (1968); *Part IV*, 4 ISR. L. REV. 80 (1969); Irene Merker Rosenberg & Yale L. Rosenberg, “*Perhaps What Ye Say Is Based Only on Conjecture*”—*Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995); Irene Merker Rosenberg & Yale L. Rosenberg, *Lone Star Liberal Musings on “Eye for Eye” and the Death Penalty*, 1998 UTAH L. REV. 505 (1998); Samuel J. Levine, *An Introduction to Legislation in Jewish Law, with References to the American Legal System*, 29 SETON HALL L. REV. 916 (1999); Alan M. Sokobin, *Child Abuse: A Study in Comparative American and Jewish Law*, 31 U. TOL. L. REV. 401 (2000); Note, *Looking to Statutory Intertext: Toward the use of the Rabbinic Biblical Interpretive Stance in American Statutory Interpretation*, 115 HARV. L. REV. 1456 (2002); Steven H. Resnicoff, *Jewish Law: Duties of the Intellect*, 1 U. ST. THOMAS L.J. 386 (2003); Irene Merker Rosenberg, *The Ten Commandments and the Lesser Included Offenses of Murder and Theft*, 39 CRIM. L. BULL. 693 (2003); Samuel J. Levine, *An Introduction to Self-Incrimination in Jewish Law, with Application to the American Legal System: A Psychological and Philosophical Analysis*, 28 LOY. L.A. INT’L & COMP. L. REV. 257 (2006); Martin H. Pritikin, *Punishment, Prisons, and the Bible: Does “Old Testament Justice” Justify Our Retributive Culture?*, 28 CARDOZO L. REV. 715 (2006); Elimelech Westreich, *Elements of Negotiability in Jewish Law in Medieval Christian Spain*, 11 THEORETICAL INQUIRIES L. 411 (2010); Steven H. Resnicoff, *Jewish and American Bankruptcy Law: Their Similarities, Differences, and Interactions*, 19 AM. BANKR. INST. L. REV. 551 (2011); J. David Bleich, *Support of Non-Biological Children in Jewish Law*, 3 INT’L J. JURIS. FAM. 61 (2012).

scholarship that is at the foundation of these institutes. While this is certainly not the first bibliography of Jewish law scholarship (for example, the excellent but unannotated *Jewish Law: Bibliography of Sources and Scholarship in English* by Phyllis Holman Weisbard and David Schonberg, the subject listing of which formed the basis of the subject listings for this bibliography), I believe that this the collection of articles and annotations provides the first comprehensive bibliographic account of the historical development and current state of Jewish law scholarship in American law schools, with certain limitations as discussed below.

Several interesting conclusions can be drawn from this literature, each in and of itself ripe for more detailed research. First, scholars of the early twentieth century worked hard to counter inaccurate impressions and understandings of Jewish law. Their work is consistently defensive, arguing that the characterization of Jewish law by non-Jewish scholars as unchanging, unyielding, and harsh, is rooted in ignorance at best, and tinged with an anti-Jewish theological outlook at worst. Second, beginning in the 1980s, a new line of Jewish law scholarship emerges in response to the work of Professor Robert Cover. This scholarship continues until today, providing detailed and sophisticated analysis of Jewish law in a variety of comparative and non-comparative contexts and perspectives. Core members of this group of scholars lead the Association of American Law School's Jewish Law Section. Alongside this line of scholarship is the unique voice of Israeli scholars published in American law reviews. Israeli scholars address slightly different topics, and often provide a perspective influenced by the experience of Jewish sovereignty in Israel, and the effort to use Jewish law as source for modern Israeli law (the *Mishpat Ivri* or "Hebrew law") movement. Moving a bit further out from this core is work that studies limited aspects of Jewish law, usually in a limited context, such as to compare it to other systems, or even using it to explore the scholar's own values or beliefs. This work tends to be less connected in content, or citation, to the more detailed work with Jewish law at its center. In some cases, this more peripheral work is criticized for failing to fully understand the breadth and depth of Jewish law. Finally, although largely excluded from this bibliography (see explanation below), law students repeatedly write about similar topics related to Jewish law, such as the law of Jewish divorce, state statutes intended to prevent fraud in the kosher supervision industry, and litigation over the erection of a Sabbath boundary called an *eruv*.

In order to draw these bibliographic conclusions and present a picture of this area of scholarship as a whole, the aim of this volume is to collect, categorize, and annotate *almost* all faculty-written law review articles whose main topic is Jewish law. I say "almost," rather than "all" for sev-

eral reasons. First, it is quite possible that I have missed some. While I spent a fair amount of time searching for any and all articles I could find, I concede that I may have missed some articles appropriate for inclusion. Second, I include only articles that meet certain criteria, making rare exceptions when appropriate. Generally, I include faculty-written articles in law reviews whether or not the author is a law professor, or a professor in another discipline, such as history, politics, or Judaic studies.

While the purpose of this bibliography is to document Jewish law scholarship in American law reviews, I do include some material published in other countries, mainly Britain, Canada, and Israel. Indeed, most of the early legal scholarship in Jewish law was published in British law reviews. I only selectively include articles written by law practitioners or judges. I have also selectively included substantive book reviews. I exclude most student-written work unless it addresses a unique topic, and is original and well-written. I exclude articles that address topics related to, but not exactly, Jewish law. For example, most articles that address biblical law from a non-Jewish perspective (sometimes called “Mosaic” law) are excluded. However, many articles address both a Jewish and non-Jewish understanding of biblical law. In those cases, I made a judgment call, seeking to be over- rather than under-inclusive.

I include some articles with topics beyond strictly “Jewish law,” such as articles addressing the Jewish community and law, Jews and affirmative action, legal disputes over the erection of a Shabbat boundary called an *eruv*, or the constitutionality of kosher fraud statutes. It is important to note that this bibliography only includes articles from law journals. There is a monographic literature on Jewish law written by law professors, although it is limited (especially compared to the monographic literature on Jewish law written by rabbis, Judaic studies professors, or historians, which is much more extensive). Recent examples include *The Law Before the Law* by Steven Wilf, and *From Maimonides to Microsoft: The Jewish Law of Copyright Since the Birth of Print* by Neil Weinstock Netanel and David Nimmer. This bibliography will provide the researcher a detailed look at Jewish law literature produced in the American legal academy which is mainly found in law reviews. But scholarship in Jewish law certainly extends beyond this parameter, as does any interdisciplinary subject.

I would like to thank just a few of the many people without whose support I could not have completed this project. David Magier and Patty Gaspari-Bridges, my guides and mentors at the Princeton University Library, have provided me the time and advice necessary to sustain such a long-term project. Thank you also to Sally Wise, Robin Schard, and Helen Wohl, under whose guidance I truly learned how to become a law librarian, and who first sparked my interest in specializing in Jewish law; Shira

Megerman, a visionary powerhouse who has tirelessly worked to organize and support Jewish law librarians and Jewish legal research; and Professor Sam Levine of the Touro College Jacob D. Fuchsberg Law Center, who not only wrote the introduction to this book, but helped arrange two symposia related to its topic, one at the Princeton University Library and one at the Touro College Jacob D. Fuchsberg Law Center, to discuss Jewish legal research and explore how it functions in academia. Also, thank you to the American Association of Law Libraries for its continued publication of the AALL Publications Series, of which this bibliography is a part. I am especially grateful to Janet Sinder, long a writing mentor, who went above and beyond on this project, diligently editing the entire manuscript several times. Finally, I feel so blessed that my wonderful and beloved family has provided me with time and encouragement to see this bibliography through. My mother, Carol Hollander, even spent the early days of her retirement sitting with the *Bluebook*, something with which she had no experience, converting the journal name in each bibliographic entry to *Bluebook* abbreviations, making my mistaken decision to type out the full name of each journal infinitely easier to correct. To everyone whose support made this book possible, both those mentioned and unmentioned, thank you and G-d bless.

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