



Georgetown University Law Center
Scholarship @ GEORGETOWN LAW

2002

Yale Rosenberg: The Scholar and the Teacher of Jewish Law

Sherman L. Cohn


Georgetown University Law Center, cohn@law.georgetown.edu

This paper can be downloaded free of charge from:

<https://scholarship.law.georgetown.edu/facpub/921>

39 Hous. L. Rev. 872-877 (2002)

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <https://scholarship.law.georgetown.edu/facpub>

 Part of the [Jewish Studies Commons](#), [Legal Education Commons](#), and the [Religion Law Commons](#)

*Sherman L. Cohn**

Yale Rosenberg: The Scholar and the Teacher of Jewish Law

In the early 1980s, when he was a young professor at the University of Houston Law Center, I had the occasion to meet Yale Rosenberg. It was clear from our discussion that Professor Rosenberg had a strong interest in Jewish law as well as a strong knowledge base. We discussed teaching such a course at the University of Houston Law Center. Professor Rosenberg was doubtful about teaching a course in Jewish law at a secular law school, particularly one in Texas. But that conversation began a series of conversations where Yale explored in some depth the course that we were offering at Georgetown. It took several years of discussion, but in 1989, Professor Rosenberg took the plunge and began offering a Jewish law course to the students at the University of Houston Law Center. The rest is a highly successful history.

By 1989, Professor Rosenberg also began to publish in the field, co-authoring with his wife, Professor Irene Marker Rosenberg. Together, there are ten major articles with a focus on Jewish law. But when one examines Professor Yale Rosenberg's other writings, it is clear that the influence of his study and interest in Jewish law permeated all of his thinking and scholarship.

It would take a full volume of this Journal to review all of Professor Rosenberg's writings on Jewish law. But I would like to examine, though cursorily, one that illustrates the contribution that has been made by Yale and Irene Rosenberg. This one article was also written with a third author, Bentzion S. Turin, then a student at the University of Houston Law Center, and with a significant background in Jewish law. This is the 1999 article on *Return of the Stubborn and Rebellious Son: An Independent Sequel on the Prediction of Future Criminality*.¹

This article takes one of the more difficult biblical commandments,² that appears to require parents to bring forward for condemnation to death a son who is rebellious against his parents. The article, after setting forth the biblical commandment and its context, traces the thinking that went into this commandment, as well as its application, through the two

* Professor of Law, Georgetown University Law Center. LL.M., Georgetown University Law Center 1960; J.D., Georgetown University Law Center 1957; B.S. in Foreign Service, Georgetown University, 1954.

1. 37 BRANDEIS L.J. 511 (1999).

2. *Deuteronomy* 21:17-21.

significant segments of the Talmud, the Mishnah (redacted at the end of the second century) and the Gemara (redacted during the sixth century), and from there to the significant writings of various commentators through the ages. It is a real tour de force.

The article is a first-rate exposition of the sources of Jewish law and how they interrelate. Taking a set of biblical verses, exploring both their literal and their contextual meanings, and then moving on, through history, with the exposition of how these verses were treated in the Talmud and in the writings and responsa since, the article moves the reader through a full development of how Jewish law works. The biblical word is put forth. But it is not just the literal word that is of concern. The context is also important and set forth. And from there to the historical development. The sages of the Talmudic era worried about the intent as well as the meaning of the language. They sought the purpose behind a commandment which, read literally, would have parents bring forth their own child, charge him with the crime of rebellion, and lead him to his death for that crime. As they parsed for intent, the sages of the Talmudic era began to focus upon prevention of greater crimes after the child became an adult. Thus, there is a concept of predicting the future criminal. And, once that intent is arrived at, the sages of old begin to place boundaries upon biblical command so that it would not be utilized except where the intent would be furthered. This journey is then continued with the views of writings of Maimonides and Rashi in the Middle Ages through responsa authors of the past few centuries.

From the set of biblical verses, the article develops the jurisprudence of Jewish law. A jurisprudence that begins with the word of the supreme lawgiver, one that says this is the entire law to which one may not add and from which one may not subtract,³ but then, building on intent, and utilizing the exegesis of and hermeneutics of Jewish law, cabins the commandment so that it is to be used in only the most essential situations—if ever. The article thus provides an abject lesson of the entire jurisprudence that is Jewish law, building logically block upon block toward a conclusion that does not negate the biblical command, but utilizes it for the positive hortatory that it can serve to help persuade the child who is able to discern toward responsibility. In a sense, this jurisprudential journey shows how to turn a commandment almost on its head: but to accomplish the purpose without the negative violence of which it speaks. And in process, the reader learns how Jewish law works.

3. *Deuteronomy* 4:2.

But the article goes further. Drawing on the jurisprudence of Jewish law, the article teaches a lesson concerning prediction of criminality. Thus, the lesson of the article is broader than the teaching of Jewish law and its system in the context of one commandment. It presents an abject lesson about the ability of man to predict who in the future will commit a crime. That is the issue that the sages of old, and the writers through the ages, have wrestled with. And as the article makes clear, it is an issue that is still being wrestled in our time. Preventive detention is an attempt to lock up those who, from past profile, are likely to commit crimes. Our "three strikes and you are out" penology is really based on an attempt to predict that here is a person who will continue to commit crimes if permitted to do so. And, our society is wrestling with the issue of predictability again in terms of trying to identify those who, though not yet having committed a wrongful act, are lying in wait to commit some terrible terrorist act. What this article does is to teach us that the issue is not new, it goes back to biblical times and has been wrestled with ever since. And from the jurisprudence of the rebellious son, we too have much to learn.

This raises the broader issue of the teaching of Jewish law. In 1999, after ten years of offering the course at the University of Houston Law Center, Professor Yale Rosenberg offered his reflections at the Jewish Law Section of the Association of American Law Schools (AALS) Annual Meeting. Professor Rosenberg's experience mirrored that which I have found at Georgetown. A significant number of students who take the course are not Jewish, and are exploring the subject from their own perspectives. Some are fundamental Christians who are already well versed in the Bible. Others are Mormons, exploring their own heritage. (The longest continuous running course on Jewish law has been offered at the law school at Brigham Young University.) Others are children of, or participants in, an intermarriage and are exploring the subject of Judaism from this perspective. And still others have a significant background in theology or (and they are different) moral theology and wish to build upon their already strong bases. Among the Jewish students there are generally one or two with significant backgrounds in the field, but sometimes rigidly so. However, most are exploring a heritage to which they have been barely exposed.

The number of law schools offering Jewish law courses has grown, from just a handful in 1980, to somewhere between thirty and forty today, and that number is held in check partially by the inability to find qualified teachers. An interesting question arises as to why this evolution. Until the 1970s, the emphasis in law school was almost exclusively upon those practical courses that

2002]

IN MEMORIAM

875

were needed for the successful practice of law, including the passing of the bar exam. Courses such as ethics, jurisprudence, history of law, and the like were considered oddities if offered at all.

But the academic legal community has undergone change. In the first half of the twentieth century, law schools were almost completely under the influence of the Realist and Positivist schools of jurisprudence: the law is what has been duly enacted, and in a common-law system, what the judge says it is. Leading law schools taught solely positive law. Indeed, there was no need to teach jurisprudence as there was no issue to be discussed. The same was true of ethics. Ethics explores values, and the Realist was not interested in a value discussion within the law. But with the study of what happened in Europe in the 1940s, there was a realization that Germans accomplished the Holocaust—and not just of Jews—within duly enacted German law. It is said that the Realist school floundered upon the shoals of Auschwitz. And the Nuremberg trials helped foster a concept that there is a law of general principles that trumps positive law when they are in conflict.

Thus, in the law schools of the 1960s and 1970s, there was a re-discovery of values in the law. Law school faculties began to ask “Why?” Watergate furthered this process, for many of those involved were graduates of first-rank law schools. For the first time, the self-appointed leading law schools began to explore values and offer courses in which values were explored. And the students of the 1970s and beyond were open to such courses, for they too were questioning and exploring.

Thus, attitudes changed. Today, ethics of law practice is a must in the studies of the student. But, more, today most law schools offer perspective courses that look at the history of the law as well as the legal profession, the sociology of the law, and subjects as diverse as Law and Literature, Law in Literature, and Law in Film. As a part of this broadening, there was an opening for other courses that gave breadth and depth, though of no practical importance.

Jewish law fits into this picture. But more was happening. For one thing, legal education, which had been quite isolated, began to find significance in other disciplines. The interplay of law and economics, psychiatry, psychology, philosophy, and even physical science began to appear in curricula. Joint teaching with members of other disciplines became a sign of maturity. And many of the newer recruits to law faculties had PhDs in other disciplines along with law degrees. Joint degree programs proliferated, bringing both law students and law faculties into contact with other disciplines in a meaningful way.

Still another influence affects this evolution. Before the 1970s, the focus was upon assimilation. Historically, legal studies were pursued by the establishment (generally, White, Anglo-Saxon, Protestant and male). Then, between the First and Second World Wars, came the Roman Catholics from southern and eastern Europe as well as Jews, largely from eastern European backgrounds. The emphasis, however, was upon assimilation. There was no recognition in American university education as a whole, and certainly not in legal education, of any value to ethnic studies. This began to change, with the push coming largely from the Afro-American Black Pride movement. It also came from the Women's movement. We began to have, at the undergraduate, college level, Black studies and Women's studies programs. This made it possible for the Jews, too, to speak of wanting to study their own heritage, and Jewish studies programs began.

Thus, we found in the past three decades that it was possible to be openly ethnic and still be American. And we found it acceptable to study each other's heritage, which permits non-Jews to take Jewish law courses.

Finally, there is another movement, small but important: what Professor Russell Pearce has termed the "religious lawyering movement."⁴ In the 1970s, Professor Thomas Schaffer of Notre Dame first looked at being a lawyer from the Roman Catholic perspective.⁵ Others joined in from various Christian perspectives. This led Jewish academics and lawyers to begin exploring what it means to be a Jewish lawyer. Professors Russell Pearce,⁶ Howard Lesnick,⁷ Monroe Freedman,⁸ Michael Broyde,⁹ Steven Resnicoff,¹⁰ and Samuel Levine¹¹ began to think and write on the subject. This paper is not the place to explore

4. See Russell G. Pearce, *The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075 (1998).

5. See Thomas L. Schaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME L. REV. 231 (1979). See generally THOMAS L. SCHAFFER, ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT (1981).

6. See Russell G. Pearce, *Reflections on the American Jewish Lawyer*, 17 J.L. & RELIGION 179 (2002) (book and essay review).

7. See, e.g., Howard Lesnick, *The Religious Lawyer in a Pluralist Society*, 66 FORDHAM L. REV. 1469 (1998).

8. See Monroe H. Freedman, *Legal Ethics from a Jewish Perspective*, 27 TEX. TECH L. REV. 1131 (1996).

9. See, e.g., Michael J. Broyde, *Genetically Engineering People: A Jewish Law Analysis of Personhood*, 13 ST. THOMAS L. REV. 877 (2001).

10. See Steven H. Resnicoff, *The Attorney-Client Relationship: A Jewish Law Perspective*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 349 (2000).

11. See, e.g., Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH. L. REV. 1199 (1996).

this fascinating subject in depth.¹² I use it solely to show that it became respectable in academic legal circles to be a Jew or a Catholic or a Mormon or a fundamental Christian openly and to explore the law from that perspective as a legitimate academic and scholarship subject.

It is in this era that Yale Rosenberg, with a strong interest in Jewish law, began teaching at the University of Houston Law Center. It took several years, but in 1989, he finally took the plunge and began offering courses in Jewish law. And he found among the students a fertile ground. Perhaps, in conclusion, it would be best to quote Professor Rosenberg's own words:

Finally, a confession and a bit of advice: I was initially very reluctant to teach Jewish law. For five years, Sherman Cohn, a past chair of this section, urged me to teach the course—and I told him I wasn't a rabbi, I had never studied Jewish law other than on a very informal basis at my shul, and, in short, I didn't know enough—and he said, 'At the rate you're going, you'll never know enough.' And so when I finally took the plunge, I stepped into the water very gingerly. The Talmud is, after all, a sea and a very deep one at that, and many have drowned in it. Nonetheless, a decade later, I can tell you that even for a water treader like me, teaching Jewish law is a remarkable experience and a very gratifying one. So my one piece of advice to you, if you are thinking about teaching Jewish law, is not to make the same mistake that I did. Don't dawdle. Jump right into the sea or the bramble bush of Jewish law as soon as possible. You'll be glad you did—and so will your students.¹³

Yes, Yale Rosenberg took the plunge. He proved to be an important scholar as well as a first-rate teacher of the subject. He will be missed by his fellow teachers but most of all, by his students and those who will have no opportunity of joining with him in exploring this fascinating subject.

12. See Symposium, *The Relevance of Religion to a Lawyer's Work: An Interfaith Conference*, 66 *FORDHAM L. REV.* 1075 (1998), and Symposium, *Faith and the Law*, 27 *TEX. TECH L. REV.* 911 (1996), for a collections of views from the perspectives of a large variety of faiths.

13. Yale Rosenberg, Remarks at the Ass'n of American Law Schools, Annual Meeting, Section of Jewish Law (January 1999) (copy of the text of the speech is in the possession of the author).