From Politics to Law: Modern Jewish Thought and the Invention of Jewish Law

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Abstract

This paper considers modern Jewish concepts of law in the context of modern legal theory's attempt to define law as an autonomous realm distinct from politics. In modern legal theory, claims for and against the idea that law is autonomous and independent of political authority have to do with different understandings of the import and limitations of law in relation to liberal democracy. So too, this paper suggests, modern Jewish arguments about an autonomous sphere of Jewish law tell us much about the political situation and implications of Jewish modernity for liberal and traditionalist Jews alike. While the concept of law in modern Judaism is often used to mark the continuity between the Jewish past and the Jewish present, it is ironically the modern Jewish concept of law (again for both Jewish traditionalist and liberals alike) that actually demarcates the difference, or discontinuity, between the pre-modern Jewish past and Jewish modernity. To make this argument the paper focuses on the father of German-Jewish Orthodoxy, Samson Raphael Hirsch (1808-1880), suggesting that his concept of Jewish law can only be understood within the context of the modern Rechtstaat. While the aim of this analysis is diagnostic rather than prescriptive, the paper considers a number of historical, theological and political implications of this argument.