

## Workshop

**June 17, 2013 | 10am – 6pm**

Wissenschaftskolleg zu Berlin

Villa Jaffé, Wallotstr. 10, 14193 Berlin

## **At the Threshold of Rabbinic Law: Textuality and Liminality in Jewish and Muslim Legal Culture**

### **Convener**

**Daniel Boyarin** (Fellow des Wissenschaftskolleg zu Berlin 2012-13/University of California, Berkeley) and **Islam Dayeh** (Zukunftsphilologie/Freie Universität Berlin)

### **Participants**

**Lena Salaymeh** (Berkeley School of Law) and **Aharon Shemesh** (Bar-Ilan University)

### **Description**

In most research and popular conceptions, the borders of Jewish Law, the *Halakha*, are considered firm and clear. The *Halakha* is understood as an internal Jewish process of development from biblical law that, while it has history, is not in dialogue with other cultures and legal systems. In this colloquium, we will explore new research that tends to show that the above picture (somewhat simplified) is not at all the case. By studying the development of sectarian *Halakha* and its relations to rabbinic law and by studying the interactions between medieval and early modern Jewish and Muslim Arab legal systems and thought a new picture of *Halakha* as a dynamic interactive system of thought and practice will be adumbrated.

## Schedule:

**Main Venue: Wissenschaftskolleg zu Berlin, Villa Jaffé, Wallotstr. 10, 14193 Berlin**

**Monday, June 17, 2013**

- 10.00 - 10.10 Introduction  
Daniel Boyarin and Islam Dayeh
- 10.10 – 11.40 Aharon Shemesh (Bar-Ilan University)  
Whose Revolution was it? The Dead Sea Scrolls, Jesus and the Rabbis on Saving Life on the Sabbath
- 11.40 – 12.00 Coffee Break
- 12.30 – 14.00 Lena Salaymeh (Berkeley School of Law)  
Borders of Jewish Law in an Islamic Context: A Case Study in Geonic “Innovation”
- 14.00 – 15.30 Lunch
- 16.00 – 17.30 Daniel Boyarin & Islam Dayeh  
Argumentation through Division: The Method of Diarexis in Islamic and Jewish Scholasticism
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## Abstracts and short biographies

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### Aharon Shemesh

(Bar-Ilan University)

#### Whose Revolution was it?

#### The Dead Sea Scrolls, Jesus and the Rabbis on Saving Life on the Sabbath

In this presentation I will challenge the scholarly consensus that the *halakhic* rule "פיקוח נפש דוחה שבת" (saving life overrides the Sabbath) is a Pharisaic-Rabbinic innovation that stems from the Maccabees' decision to fight back and defend themselves on the Sabbath (1 Maccabees ch. 2), while the "old" original *Halakhah* held fast to the plain meaning of scripture and did not permit any kind of "work" on Shabbat even under extreme and stressful circumstances. I will survey the textual evidences from the Dead Sea Scrolls, The New Testament and Rabbinic literature in order to re-chart the dynamic between tradition and exegesis of Scripture, between Pharisees' and Sadducees' *Halakhah*.

**Aharon Shemesh** is Professor of Talmud at Bar-Ilan University. He served as visiting professor at UC Berkeley, Stanford University and Harvard University; was a fellow at the Center for Jewish Studies, Harvard University, Oxford Center for Hebrew and Jewish Studies, the Rockefeller foundation study center in Bellagio, Italy and at the new Tikvah Center for Jewish Civilization and Law at the School of Law, New York University. Aharon Shemesh is an expert in Talmudic Literature and the Dead Sea Scroll. He is especially interested in hermeneutics and legal interpretations and has published widely on the development of Jewish law (*Halakha*) in antiquity. He is the author of the books: *Punishments and Sins*, Magens Press (2004), *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis*, University of California Press (2009), and (with Cana Werman) *Revealing the Hidden; Exegesis and Halakhah in the Qumran Scrolls*, Bialik Institute (2011).

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### Lena Salaymeh

(Berkeley School of Law)

#### Borders of Jewish Law in an Islamic Context: a Case Study in Geonic "Innovation"

This presentation focuses on how Jewish legal doctrines related to a recalcitrant wife's divorce transformed in the Islamic period. In 650/651 CE, Geonic rabbis issued a decree (*taqqanah*) that a recalcitrant wife (*moredet*) could procure a divorce immediately and not lose her dower (*ketubbah*). This ruling abandoned the twelve-month waiting period and loss of dower stipulated for a recalcitrant wife in the Babylonian Talmud. The majority of Geonim viewed the decree as a legal enactment validated by judicial authority and social need. But many of the Geonim's rabbinic successors viewed the decree as an aberration caused by the availability of wife-initiated divorce in Islamic courts, which presumably competed with Geonic legal authority. In contrast to these assumed borders between Jewish and Islamic laws, legal-historical evidence indicates

that both Jewish and Islamic legal practices were ambiguous and varied. Why has this Geonic decree been perceived – both by some Rishonim and by some contemporary scholars – as having deviated from Talmudic practice? I argue that this Geonic decree’s classification is the site of a contest for legal authority; I will provide historical and critical evidence to offer an alternative understanding of this Jewish law in its presumed “Islamic” context.

**Lena Salaymeh** is Robbins Postdoctoral Fellow in Islamic Law at UC Berkeley’s School of Law. She earned her PhD in Legal and Middle Eastern History from UC Berkeley and her JD from Harvard Law School. Lena’s publications include “Early Islamic legal-historical precedents: prisoners of war” in *Law and History Review* 26, no. 3 (2008): 521-544, as well as several co-authored book sections about Islamic legal history in *Lapidus, Ira M. Islamic Societies to the Nineteenth Century: A Global History*. Cambridge: Cambridge University Press, 2012. Her forthcoming publications include “Every law tells a story: orthodox divorce in Jewish and Islamic legal histories” in the *UC Irvine Law Review* (2013) and “Commodifying Islamic law in the U.S. legal academy” in the *Journal of Legal Education* (2014; available at <http://ssrn.com/abstract=2214394>). She was formerly a visiting professor of law at the University of Houston.

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## **Daniel Boyarin**

(University of California, Berkeley/Fellow of the Wissenschaftskolleg zu Berlin 2012-2013) & **Islam Dayeh**  
(Zukunftsphilologie/Freie Universität Berlin)

### **Argumentation through Division: The Method of Diarexis in Islamic and Jewish Scholasticism**

The general participation of Iberian Jewry in the scholastic culture of the Middle Ages is very well known. Less well known is the continuing influence the Arabic-Aristotelian tradition had on Spanish and Sephardic Jewish intellectual life in the fifteenth and sixteenth centuries, including its most particularly Jewish of activities, the interpretation of the Talmud. In this period, there appears a new theory and practice of Talmudic hermeneutic, which is called *iyyun*, “speculation”: Talmudic interpretation as an application and extension of the Arabic-Islamic scholastic theories *nazar* “speculation” on language and logic.

Our presentation will begin by illustrating several aspects of the significance and function of the method of diarexis in the Islamic scholastic tradition, known in Arabic as *al-Sabr wal-Taqsim*. We will then look at how fifteenth and sixteenth century Talmudic hermeneutics, particularly the work of Isaaq Canpanton (d. 1463), *The Ways of the Talmud*, makes use of this method in the interpretation of the Talmud, which later becomes the foundation of the Ashkenazi method of Talmud interpretation, commonly known as *Pilpul*.

**Daniel Boyarin**, Taubman Professor of Talmudic Culture and Rhetoric, UC Berkeley, where he teaches in the departments of Near Eastern Studies, Rhetoric and the program in Jewish Studies. Daniel Boyarin has written extensively on talmudic and midrashic studies, and his work has focused on cultural studies in Rabbinic Judaism, including issues of gender and sexuality as well as research on the Jews as a colonized people. His most recent research interests center primarily around questions of the relationship of Judaism and Christianity in late antiquity. Daniel Boyarin is currently a Fellow of the Wissenschaftskolleg zu Berlin 2012/13, where he is working on a manuscript with the title "A Traveling Homeland: the Babylonian Talmud as the Foundation of the Diaspora".

**Islam Dayeh** co-directs the research program Zukunftsphilologie. Islam Dayeh studied at the University of Jordan (BA in Islamic studies), University of Leiden (MA in Religious Studies) and University of Oxford (MSt in Jewish studies). He completed his PhD dissertation in Arabic philology at Freie Universität Berlin. He is currently completing two monographs. The first is a study of the intellectual cosmos of the Cairene-Damascene exegete, philologist, geometrician, logician and historian Burhan al-Din al-Biqai (1406-1480). The second is a study of the impact of the messianic movement of Sabbatai Zewi on the Jews of Yemen. The study is based on a critical edition of several manuscripts documenting exchanges between Yemeni Muslim jurists over the legal status of contemporaneous Jews in the wake of the Sabbatian messianic disturbances in Yemen (17th - 19th Century).

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*The research program ZUKUNFTSPHILOLOGIE supports research in marginalized and undocumented textual practices and literary cultures with the aim of integrating texts and scholarly traditions from Asia, Africa, and the Middle East as well as from Europe itself, by way of a critical recuperation of the practice of philology. The program takes as its point of departure the increasingly growing concern with the global significance of philology and its potential to challenge exclusivist notions of the self and the canon. ZUKUNFTSPHILOLOGIE is based at the Freie Universität Berlin and is a research program at the Forum Transregionale Studien. It is supported by funds from the Land Berlin. For further information, please visit: [www.zukunftsphilologie.de](http://www.zukunftsphilologie.de)*