

*Biblical Law*  
11/25/2013  
4:00 – 6:30 p.m.  
S25-305

**Theme:** Legal and Political Theory and the Study of Biblical Law  
Bruce Wells, Saint Joseph's University, Presiding

### **The Political Concept of Anarchy in the Hebrew Bible**

**Proposer:** Geoffrey Miller

**Institution:** New York University

Proposal for the joint session with the Hebrew Bible and Political Theory section on "Legal and Political Theory and the Study of Biblical Law." This paper considers the Genesis stories from the expulsion of Adam and Eve from the Garden of Eden through the Tower of Babel as an impressive meditation on the concept of anarchy -- the condition of individuals in an environment without government or law. Like political philosophers in the later Western tradition, the Bible postulates a state of anarchy in order to ground an argument in favor of the necessity of government and law as essential components of a decent human life. The Bible's analysis of how possibilities for cooperation break down due to strategic rivalry in a state of anarchy is as sophisticated as anything found in Hobbes, Locke, or Rousseau. Equally impressive is the Bible's explanation for why government and law promise to overcome these problems, and why even with government and law in place, societies do not fully realize all the benefits that cooperation can create. Unlike the later Western tradition, the Bible does not present the condition of anarchy as a state of nature; its view -- more satisfactory from a philosophical and anthropological perspective -- is that the natural human condition is to be embedded in a society organized and managed by institutions of government and law.

### **The sotah in Light of MacKinnon's \*Towards a Feminist Theory of State\***

**Proposer:** F. Rachel Magdalene

**Institution:** Universität Leipzig

Much research has been done on the sotah ritual of Numbers 5:11–31, wherein a woman suspected of adultery must undergo a seeming legal ordeal. Although some feminist attention has been paid to this legal pericope (see especially A. Brenner, *\*Intercourse of Knowledge\**), more could be done. This paper addresses the sotah once again from the perspective of the radical feminist political theory and jurisprudence of C. A. MacKinnon. MacKinnon argues in her book *\*Towards a Feminist Theory of State\** that gender is a "lived ontology" and not an epistemology. Law is one factor in turning gender from a perspective into a state of being because law is often a powerful source and marker of legitimacy and a site of force, while it simultaneously masks that use of force. MacKinnon argues that, in patriarchal societies, the male point-of-view dominates the political structure and jurisprudence (the relationship between law and life) by setting forth the so-called objective standard by which to live. The state incorporates and enforces the perspectives and hierarchies of male supremacy through its legal system. MacKinnon examines issues related to sexuality, rape, abortion, pornography, among others, as she develops a new feminist political theory and jurisprudence. This paper will apply her theory of law and state to the problem of the sotah. In the course of this work, the questions that will be asked include: What exactly is the sotah from physical, social, legal, and political perspectives? What is the overall effect of it on women's lives, their lived ontology? How does this law manifest the relationship between law and female life? Why has ancient Israelite society incorporated this ritual into its legal system? Finally, how does this law serve the political ends (broadly construed) of ancient Israelite society?

### **Collective Reprisal and Individual Rights in Israelite Law: Reconsidering the hrm Ban through the Theory of the State of Exception**

**Proposer:** Brandon J. Simonson

**Institution:** Boston University

Traditionally, the hrm ban has been considered a law, specifically one that required the utter destruction of a population to fulfill ancient Israel's rights to the land and the preservation of its religious practices. This paper examines the hrm ban in light of the theory of the state of exception in order to identify the presence and function of legal rights in Biblical law, and it considers the extent to which these rights applied to both Israelite and non-Israelite populations. This paper primarily considers Giorgio Agamben's work on the state of exception, first appearing in "Homo Sacer: Sovereign Power and Bare Life" and later in "State of Exception", expanding the theory of early twentieth century political philosopher Carl Schmitt. Integral to Schmitt's understanding of the exception is the sovereign: it is the essence of sovereignty both to decide on the state of exception and to make the decisions appropriate to that exception. The exception, therefore, is a severe economic or political disturbance that requires responding with extreme measures. Agamben builds on these ideas and fully develops a theory of the state of exception. In ancient Israel, the disturbance that initiates a state of exception oftentimes results in collective reprisal typified by the hrm ban. It is concluded that any rights attributed to the non-Israelite populations are instantly rescinded when the hrm ban is instituted, and the human being subjected to the hrm ban is reduced to its most essential form of life. Within the decision to institute the hrm ban is also the decision to eliminate this life, but this is not always the situation in other cases meriting collective reprisal. Ultimately, the theory of the state of exception provides an avenue through which to discuss the granting (and suspension) of rights to the inhabitants of ancient Israel.

### **The Rule of Ezra or the Rule of Torah?: Ezra's Legal Hermeneutics and the Torah's Legal Authority**

**Proposer:** Jonathan Vroom

**Institution:** University of Toronto

The purpose of my paper will be to provide a theoretical framework for understanding how Ezra drew legal rulings from the Torah and to examine the implications of Ezra's legal hermeneutics for our understanding of the Torah's function at that time. One of the foundational principles for any modern political theory is the concept of the rule of law, which, as traditionally formulated, requires that judges decide legal cases according to pre-established norms as opposed to their own will and discretion. Despite this standard account of the rule of law, however, many legal theorists (such as Dallmayr, Endicott, and Klatt) note that it is not without problems. One of the most significant challenges arises out of the need for legal interpretation. Since no law-maker can predict every situation that the law must address, judges are often forced to fill the gap by means of interpretation. However, when an interpreter gives a meaning to a normative text that stretches the boundaries of its semantic possibilities, it is the interpreter who rules, and not the law; this is a direct threat to the rule of law. In the case of the Ezra, if his use of the Torah is examined in light of this tension, then a more nuanced picture of the Torah's legal status emerges. Specifically, by examining the depiction of Torah obedience in Ezra 9-10, I will argue that, in contrast to modern legal systems, the Torah's authority was not limited to the range of semantic possibilities that could be assigned to individual provisions. Rather, the Torah's authority was mediated through qualified interpreters (such as Ezra) who, by means of study and devotion, embodied the text itself; their legal declarations were conceived as Torah itself, thus dissolving the dichotomy between the rule of man and the rule of law.

### **Jeremy Bentham and the Birth of the Modern Study of Biblical Law**

**Proposer:** Joshua Berman

**Institution:** Bar-Ilan University

While Spinoza, Astruc, Eichhorn, De Wete and Ewald all paid great attention to contradictions within Pentateuchal narrative, none paid attention to what today are evident contradictions within biblical law. This paper claims that the exercise of identifying seeming legal contradictions within the Pentateuch and assigning them to competing law codes—in short, what we call today the critical study of biblical law—is an invention

of the late-nineteenth century. At root here is the distinction between two conceptions of what is meant by the word "law". Most modern expositors implicitly work with assumptions of law as \*statutory\* law, with the result that anachronistic notions about law continue to permeate discussions of biblical law. It is difficult to clear away intuitive assumptions without an alternate set of coordinates to assess the issue at hand in a new and different way. To move beyond a view of biblical law as statutory in nature, we need to identify a well-grounded empirical model that answers the fundamental questions: What is law? How is law determined? What is the role of sanctioned texts in determining that law? This paper seeks to re-appropriate the \*common-law\* tradition of jurisprudence as a heuristic aid for the study of ancient Near Eastern law generally and biblical law in particular. This approach to jurisprudence went largely out of favor in the mid-nineteenth century and we have lost touch with its basic assumptions. Re-engaging the common-law tradition will enable us to re-examine basic questions raised by the critical study of biblical law: What is the relationship between the genres of law and narrative? What are the mechanisms that governed the evolution of law in ancient Israel? How may we identify redactional layers in a text? What are the conditions that allowed for the formation of the Pentateuch?