# of Law and Religion

Volume XVII

Numbers 1 and 2

2002

#### Articles

Obligation, Motivation and Reward: An Analysis of a Talmudic Principle

David Benatar

Maimonides on Equity: Reconsidering the Guide for the Perplexed III:34

Hanina Ben-Menahem

Biblical Social Welfare Legislation: Protected Classes and Provisions for Persons in Need

Richard H. Hiers

Review Essays and Book Reviews listed by theme

Jewish Ethics and Politics

Jewish Law

Biblical Law

Sponsored by: Hamline University School of Law

Published by: Hamline University School of Law

ISSN: 0748-0814

# THE JOURNAL OF LAW AND RELIGION

VOLUME XVII

SHARON CLARK WILLIAMS

KATHRYN RUSSELL

2002

Numbers 1 & 2

#### **EDITORIAL STAFF**

#### **Editor**

MARIE A. FAILINGER, Hamline University School of Law

#### Managing and Book Editor

HOWARD J. VOGEL, Hamline University School of Law

#### Associate Editor

PATRICK KEIFERT, Luther Theological Seminary

#### **Book Review Editor**

EDWARD McGLYNN GAFFNEY, Jr., Valparaiso University School of Law

#### Technical Editor

STEPHEN LIEBO, Hamline University School of Law

#### Production/Subscription Manager

LINDA BERGLIN

#### **EDITORIAL ASSISTANTS**

FALLON KELLY SHARI SELANDER JESSICA PAGE JIM ZULEGER

#### EDITORIAL BOARD

ELIZABETH MENSCH, State University of New York at Buffalo, School of Law, Chair AZIZAH AL-HIBRI, T.C. Williams School of Law, University of Richmond EDWIN J. BUTTERFOSS, Hamline University School of Law STEPHEN L. CARTER, Yale Law School ANTHONY COOK, Georgetown University Law Center MARIE FAILINGER, Hamline University School of Law EDWARD MCGLYNN GAFFNEY, JR., Valparaiso University School of Law EMILY HARTIGAN, Saint Mary's University of San Antonio School of Law AFRA JALABI, Islamic Scholar, Montreal, Quebec ROBERTO JUAREZ, St. Mary's Law School PATRICK KEIFERT, Luther Theological Seminary HOWARD LESNICK, University of Pennsylvania Law School NANCY MILLER-HERRON, Attorney at Law, Dresden, Tennessee, Secretary MICHAEL J. PERRY, Wake Forest University School of Law THOMAS PORTER, Attorney at Law, Boston, Massachusetts

EARL SCHWARTZ, Hamline University
DOUGLAS STURM, Professor Emeritus, Bucknell University
HOWARD J. VOGEL, Hamline University School of Law, Treasurer
ROBERT YAZZIE, Office of the Chief Justice—Navajo Nation

#### ADVISORY COMMITTEE

MILTON KONVITZ, Professor Emeritus, Cornell University of New York, Co-chair DOUGLAS STURM, Professor Emeritus, Bucknell University, Co-chair TAHA JABER AL-ALWANI, The Graduate School of Social and Islamic Sciences ZAFAR ISHAQ ANSARI, The International Institute of Islamic Thought M. SALEEM EL-AWA, Islamic Scholar, Cairo, Egypt RICHARD BAEPLER, Valparaiso University School of Law MILNER BALL, University of Georgia School of Law HAROLD BERMAN, Emory University School of Law GERARD BRADLEY, Notre Dame University Law School JAMES BRESNAHAN, Professor Emeritus, Medical Ethics & Humanities, Northwestern University Medical School MICHAEL BROYDE, Emory University School of Law LYNN BUZZARD, Campbell University School of Law FRED CARNEY, Perkins School of Theology, Southern Methodist University CARL ESBECK, University of Missouri-Columbia School of Law RICHARD HIERS, University of Florida M. CATHLEEN KAVENY, Notre Dame University Law School DAMIEN KEOWN, University of London, Goldsmiths SANFORD LEVINSON, University of Texas School of Law DAVID LITTLE, Harvard University Divinity School ROBIN LOVIN, Perkins School of Theology, Southern Methodist University SEYYED HUSSEIN NASR, George Washington University LOUIS NEWMAN, Carleton College KAY PRANIS, MN Department of Corrections, Restorative Justice MICHAEL SCHERSCHLIGT, Hamline University School of Law ELIZABETH SCHUESSLER-FIORENZA, Harvard University Divinity School THOMAS SHAFFER, Notre Dame University Law School PETER N. THOMPSON, Hamline University School of Law CHARLES VILLA-VICENCIO, University of Cape Town, South Africa ROSALIE WAHL, Associate Justice, Retired, Minnesota Supreme Court MICHAEL WELKER, University of Heidelberg, Germany JOHN WITTE, Jr., Emory University School of Law WILSON YATES, United Theological Seminary of the Twin Cities STEPHEN B. YOUNG, Attorney at Law, Saint Paul, Minnesota

The Journal of Law and Religion is sponsored by the Hamline University School of Law and is a nonprofit, nonpartisan publication devoted to investigating the interaction of religion and law.

Subscriptions to *The Journal of Law and Religion*, which is published twice annually, are \$25 per two-issue volume for individuals, \$35 for institutions, and \$10 for students. Add an additional \$10 for foreign postage. Subscription requests, manuscripts, book reviews, books to be reviewed, and general correspondence should be addressed to:

The Journal of Law and Religion 1536 Hewitt Avenue Saint Paul, Minnesota 55104 or jlr@gw.hamline.edu

Citations conform to the Association of Legal Writing Directors' *ALWD Citation Manual*. Unsolicited manuscripts will be returned only upon request.

Individual and back issues and complete sets of *The Journal of Law and Religion* may be ordered directly from William S. Hein & Co., 1285 Main Street, Buffalo, New York 14209.

The views and opinions expressed in *The Journal of Law and Religion* are those of the authors and do not necessarily reflect the views of the editorial staff, the editorial board, the advisory board, or the sponsors of *The Journal of Law and Religion*.

Articles are indexed in the *Index to Legal Periodicals* published by The H.W. Wilson Co. (Bronx, New York), and in the *Legal Resource Index* available on-line on a variety of computer database services.

Articles are also indexed in *Religion Index One: Periodicals;* book reviews are indexed in *Index to Book Reviews in Religion*. Both indexes are published by the American Theological Library Association, Chicago, and are available online through BRS Information Technologies (Latham, New York) and DIALOG Information Services (Palo Alto, California).

Internet access to *The Journal of Law and Religion*, including an index to past issues, is available at <a href="http://www.hamline.edu/jlr">http://www.hamline.edu/jlr</a>

All copyrights are reserved.

Cite as: 17 J LAW & RELIG

#### STATEMENT OF PERSPECTIVE

The Journal of Law and Religion was initiated in 1982 as a collaborative effort of the Council on Religion and Law and the Hamline University School of Law. It was born of a sense of historical malaise. The modern age with its strong propensity toward the secularization of all areas of life, while not without merit in its liberating effects, nonetheless has its dark side.

We live, some say, in a time of profound historical crisis. Domestically and globally, we confront massive issues which force us to reconsider, in fundamental ways, the shape and quality of our common life. Yet many of the disciplines of thought and practice that should be a rich resource in such a time are found wanting—among them, law and religion. Law, a discipline presumably devoted to the ways of justice, has all too often become a set of complex, technical tools without concern for higher purpose. Religion, presumably given to the all-embracing promises and prescriptions implied in the sense of the sacred, has all too often become privatized and neglectful of our public life.

The Journal of Law and Religion is dedicated to a fundamental reappraisal of the disciplines of law and religion as they impinge on each other, might instruct each other, and taken in their conjunction, might offer a constructive response to the major issues of our times. As such its concerns are sixfold.

- Historical The Journal intends to encourage the examination of historical developments, movements, thinkers, and issues to enrich our understanding of how law and religion have, in various ways, been mutually influential.
- The Journal intends to promote constructive work in religious and legal thought about fundamental theological and jurisprudential questions pertaining to professional practice and the structures of our public life.
  - Ethical The Journal intends to support explorations into the foundations of ethical judgment and normative critiques of our social life, particularly as they draw upon resources from the life of law and religion.
  - Global The Journal intends to be encompassing in its reach, seeking out voices from all the religious and legal traditions throughout the world and bringing them into conversations with each other.
- Professional The Journal intends to stimulate collaboration between jurists and religious leaders given their respective commitments, as professionals, to the common good of all peoples.
  - Spiritual The Journal recognizes that human existence is grounded in the spiritual, which is represented in many forms and expressions.

The Journal is thus a forum within which the disciplines of law and religion might together consider with utmost seriousness their joint responsibility for the creation of a civilization of genuine peace and justice. Within the compass of that purpose, the Journal intends to be open-minded and non-prejudicial; it is receptive to submissions from all persuasions and perspectives.

# **ACKNOWLEDGEMENT**

The Editorial Board of the Journal of Law and Religion gratefully acknowledges the contribution of the Lilly Endowment toward preserving the best English language scholarship in law and religion published in the 1990s through its grant to assist in the publication and worldwide distribution of this issue on leading works on law and religion during the decade of the 1990s to the present.

#### A Letter to New Readers:

With the financial assistance of the Lilly Endowment, we are able to disseminate this issue of the *Journal of Law and Religion* beyond our regular subscribers/readers. We hope that you will be able to use this issue in your research or work, or will pass it on to someone you know will use it.

The Journal of Law and Religion was founded in order to bring scholars and professionals in law and religion back into conversation with each other about the profound crises of our modern world. This conversation is interfaith and interdisciplinary, welcoming persons from all faith traditions including secularists, and all intellectual and scholarly traditions. What we share is the recognition that human existence "is founded in the spiritual" and is essentially ethical, and that serious scholars and professionals can think, write and work on the common good of all peoples out of their faithfulness to their own distinctive traditions. We also share a passion for excellence and critical engagement in important human concerns. If you would like to know more about what the Journal is about or what we have published in past issues, see our website at http://www.hamline.edu/jlr

If you are receiving the Journal for the first time we hope that you will join our community of subscriber/readers for the next issues of the Journal. For the modest price of \$25 for two issues (one volume) per year (\$35 for institutional subscribers, and an additional \$15 for foreign postage), you can become involved in this important dialogue. For a three-year subscription, we would even be pleased to enter your subscription at a reduced rate (\$60 for six issues, \$90 for institutional subscribers, plus foreign postage), or alternatively, a complimentary copy of Volume VIII (the Williamsburg issue), or one of our special issues, so long as supplies are available.

Marie A. Failinger, Editor

# HAMLINE UNIVERSITY SCHOOL OF LAW

A subscription to the

# JOURNAL OF LAW AND RELIGION

Cost per volume (two issues) beginning with Volume XVII:

\$25.00 individual (USA) \$35.00 individual (foreign) \$35.00 institution (USA) \$45.00 institution (foreign) \$10.00 student

Circulation Manager
Journal of Law and Religion
Hamline University School of Law
1536 Hewitt Avenue
Saint Paul, Minnesota 55104

## Please include payment with your order.

Name:			<del></del>
Address:		<del> </del>	
City:	State:	Zip:	<del></del>
Phone:	Fax:	E-Mail:	

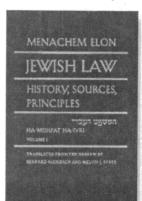
# ANNOUNCEMENT

We have acquired the entire back stock, reprint and microform rights to the

# JOURNAL OF LAW AND RELIGION

Complete sets to date are now available. We can also furnish single volumes and issues.

WILLIAM S. HEIN & COMPANY, INC. 1285 Main Street Buffalo, New York 14209 "Jewish Law—the "magnum opus" of Justice Menachem Elon, Deputy President of the Supreme Court of Israel—is now available in a superb English translation. The most definitive record to date of a unique legal system that integrates criminal, civil, and religious law to form a unified whole."—Jewish Book World



# JEWISH LAW: HISTORY, SOURCES, PRINCIPLES

Menachem Elon

Translated from the Hebrew by Bernard Auerbach and Melvin J. Sykes

"...a momentous contribution for all English-speaking Jews...
the author concisely summarizes and lucidly expounds (his) sources.
He conveys an authentic feeling for the sources by weaving quotations
into the text ...."—Law Books in Review

"Judge Elon surveys the entire history of Jewish law with breathtaking command of the sources. With meticulous attention to detail, he elucidates the religious and intellectual underpinnings of Jewish legal theory and practice from the rabbinic period to the present... indispensable reading."—Jewish Book Council

2,500 pages, 71/2" x 10 1/2", four-volume set, Cloth, ISBN 0-2276-0389-4, \$300.00



The Jewish Publication Society
2100 Arch Street, 2nd Floor, Philadelphia, PA 19103
Fax: 215-568-2017 ● E-mail: jewishbook@jewishpub.org
ORDER AT www.Jewishpub.org or 800-234-3151

# THE JOURNAL OF LAW AND RELIGION

VOLUME XVII	2002	Numbers 1 & 2
	TABLE OF CONTENTS	
Editor's Preface		xx
David Benatar	Articles Obligation, Motivation and An Analysis of a Talmudic	
Hanina Ben-Menahem	Maimonides on Equity: Ret the Guide for the Perplexed	
Richard H. Hiers	Biblical Social Welfare Leg Classes and Provisions for	•
Re	view Essays and Book Rev	iews
	JEWISH ETHICS AND POLITIC	cs
Allan Arkush	On Justice: An Essay in Jeby L.E. Goodman	
Alan Avery-Peck	Commandment and Commin Jewish Legal and Politic edited by Daniel H. Frank.	cal Philosophy,
David Benatar	Contemporary Jewish Ethic A Reader, edited by Elliot I Louis E. Newman	N. Dorff &

David M. Cobin	Selected Topics in Jewish Law, Volumes 4 and 5: Abortion and Treating the Critically Ill, by Daniel Sinclair107
Steven Copeland	Review Essay: That Law which Calls us Away from Mystifying Rapture to Religious Responsibility. Entre Nous: On Thinking-of-the-Other; Nine Talmudic Readings, by Emmanuel Levinas; The Burnt Book: Reading the Talmud,
	by Marc-Alain Ouaknin;111
David R. Dow	Human Rights in Judaism: Cultural, Religious, and Political Perspectives, edited by Michael J. Broyde & John Witte, Jr
Paul Finkelman	Jews, Slaves, and the Slave Trade: Setting the Record Straight, by Eli Faber125
Robert Goldenberg	A Living Covenant: The Innovative Spirit in Traditional Judaism, by David Hartman129
Catherine Hezser	A Tree of Life. Diversity, Flexibility, and Creativity in Jewish Law, by Louis Jacobs133
Catherine Hezser	Essays on Law and Religion. The Berkeley and Oxford Symposia in Honour of David Daube, edited by Calum M. Carmichael137
Catherine Hezser	Jewish Law: Bibliography of Sources and Scholarship in English, by Phyllis Holman Weisbard & David Schonberg141
Martin Kavka	Review Essay: Monotheism and the Capabilities Approach: On the Writings of Lenn E. Goodman. Judaism, Human Rights and Human Values; On Justice: An Essay in Jewish Philosophy; God of Abraham, by Lenn Evan Goodman143

Milton R. Konvitz	Natural Law in Judaism, by David Novak155
David Kraemer	The Jewish Political Tradition, Vol. One: Authority, edited by Michael Walzer,
	Menachem Lorberbaum, & Noam J. Zohar159
Etienne Lepicard	AIDS in Jewish Thought and Law, edited by Gad Freudenthal163
David L. Lieber	Four Approaches to the Book of Psalms: From Saadiah Gaon to Abraham Ibn Ezra, by Uriel Simon
Eric Michael Mazur	Torah and Constitution: Essays in American Jewish Thought, by Milton R. Konvitz171
Eric Michael Mazur	American Jews and the Separationist Faith: The New Debate on Religion in Public Life, edited by David G. Dalin
Russell G. Pearce	Review Essay: Reflections on the American Jewish Lawyer. Rabbis and Lawyers: The Journey from Torah to Constitution; by Jerold S. Auerbach; The Pursuit of Justice and Jewish Law: Halakhic Perspectives on the Legal Profession, by Michael J. Broyde
Avram Israel Reisner	Medicine and Jewish Law I.;  Medicine and Jewish Law II,  edited by Fred Rosner189
Steven H. Resnicoff	Jewish Law and the New Reproductive Technologies, edited by Emanuel Feldman & Joel B. Wolowelsky193
Yale L. Rosenberg	Crime, Punishment, and Deterrence: An American-Jewish Exploration, edited by David M. Gordis197

Noam J. Zohar	Past Imperatives: Studies in the History and Theory of Jewish Ethics, by Louis E. Newman201
	Jewish Law
David M. Cobin	Between Civil and Religious Law: The Plight of the Agunah in American Society, by Irving A. Breitowitz203
Perry Dane	The Study of Talmud: Understanding the Halachic Mind, by Abraham Hirsch Rabinowitz207
Dena S. Davis	Women and Jewish Law: The Essential Texts, Their History, & Their Relevance for Today, by Rachel Biale217
James A. Diamond	Maimonides on the "Decline of the Generations" and the Nature of Rabbinic Authority, by Menachem Kellner219
Leon Wiener Dow	Authority, Process and Method: Studies in Jewish Law, edited by Hanina Ben-Menahem & Neil S. Hecht
Gordon M. Freeman	Rabbinic Political Theory: Religion and Politics in the Mishnah, by Jacob Neusner227
Neil Gillman	The Shema: Spirituality and Law in Judaism, by Norman Lamm231
Bernard S. Jackson	Review Essay: A Jewish Law Miscellany.  Marriage as a Covenant. A Study of Biblical Law and Ethics Governing Marriage Developed from the Perspective of Malachi, by Gordon Paul Hugenberger;  Symbols of Law: A Contextual Analysis of Legal Symbolic Acts in the Old Testament, by Åke Viberg;

	Divine Law in Human Hands. Case Studies in Halakhic Flexibility, by Jacob Halakhah Ba-Metsar Katz; Meta-Halakhah: Logic, Intuition, and the Unfolding of Jewish Law, by Moshe Koppel; Judaism, Human Values, and the Jewish State, edited by Yeshayahu Leibowitz & Eliezer Goldman; Authority, Process and Method: Studies in Jewish Law, edited by H. Ben-Menahem & Neil S. Hecht; The Dynamics of Judaism: A Study in Jewish Law, by Robert Gordis; Medicine in the Bible and the Talmud: Selections from Classical Jewish Sources, by Fred Rosner; Matters of Life and Death: A Jewish Approach to Modern Medical Ethics, by Elliot N. Dorff; Women in Chains: A Sourcebook on the Agunah, edited by Jack Nusan Porter
David Kraemer	Women and Water: Menstruation in Jewish Life and Law, edited by Rahel R. Wasserfall 247
Samuel J. Levine	A Restatement of Rabbinic Civil Law, Volumes VII and VIII, by Emanuel Quint251
Jacob Meskin	Review Essay: Modern Perspectives on Jewish Law: An Anthology of Contemporary Legal Scholarship, and an Analysis of Modern Views of Midrash.  Jewish Law and Legal Theory, edited by Martin P. Golding;  How Do We Know This? Midrash and the Fragmentation of Modern Judaism, by Jay M. Harris
Jacob Neusner	Family Redeemed: Essays on Family Relationships (Meotzar HoRav: Selected Writings of Rabbi Joseph B. Soloveitchik, Volume One), edited by David Shatz & Joel B. Wolowelsky263

Ronen Reichman & Wolfgang V. Abel	Comparing Religions through Law: Judaism and Islam, by Jacob Neusner & Tamara Sonn	267
Ronen Reichman	Are the Talmuds Interchangeable? Christine Hayes's Blunder, by Jacob Neusner	273
Steven H. Resnicoff	Rabbinic Authority and Personal Autonomy, edited by Moshe Z. Sokol	279
Marilyn Salmon	Rereading the Rabbis: A Woman's Voice, by Judith Hauptman	283
Renee S. Septimus	Women, Jewish Law and Modernity: New Opportunities in a Post-Feminist Age, by Joel B. Wolowelsky	287
Shmuel Shilo	The Right and the Good: Halakhah and Human Relations, by Daniel Z. Feldman	291
Stephen J. Werber	The Essence of Talmudic Law and Thought, by Samuel N. Hoenig	297
Stephen J. Werber	Jewish Law (Mishpat Ivri): Cases and Material by Menachem Elon, Bernard Auerbach, Daniel D. Chazin & Melvin J. Sykes	·
Joel B. Wolowelsky	Evolving Halakhah: A Progressive Approach to Traditional Jewish Law, by Moshe Zemer	309
Noam Zohar	Jewish Legal Writings by Women, edited by Micah D. Halpern & Chana Safrai	315
	BIBLICAL LAW	
Stephen J. Andrews	Property and the Family in Biblical Law, by Raymond Westbrook	319

Melissa Aubin	Women's Rights in Old Testament Times, by James R. Baker	321
Carol Bakhos	A Search for the Origins of Judaism: From Joshua to the Mishnah, by Etienne Nodet	325
Rhonda Burnette- Bletsch	Law and Liminality in the Bible by Nanette Stahl	329
Rhonda Burnette- Bletsch	God's People in God's Land: Family, Land, and Property in the Old Testament by Christopher J.H. Wright	331
J.P. Burnside	Studies in the Semiotics of Biblical Law, by Bernard S. Jackson	
Stephen B. Chapman	The Transformation of Torah from Scribal Advice to Law, by Anne Fitzpatrick- McKinley	339
James H. Charlesworth	Paul and the Mosaic Law, edited by James D.G. Dunn	345
Mark W. Chavalas	Theory and Method in Biblical and Cuneiform Law: Revision, Interpretation, and Development, edited by Bernard M. Levinson	349
Mark W. Chavalas	The Laws of the Hittites: A Critical Edition, by Harry Angier Hoffner, Jr.	353
Frank S. Frick	The Torah: Theology and Social History of Old Testament Law, by Frank Crüsemann	357
Alexandra S. Grund	The Law and the Prophets. A Study in Old Testament Canon Formation, by Stephen B. Chapman	361

Rivkah Harris	Gender and Law in the Hebrew Bible and the Ancient Near East, edited by Victor H. Matthews, Bernard M. Levinson & Tikva Frymer-Kensky369
Richard S. Hess	Review Essay: A Reassessment of the Priestly Cultic and Legal Texts. Leviticus 1-16: A New Translation and Commentary; Leviticus 17-22: A New Translation and Commentary; and Leviticus 23-27: A New Translation and Commentary, by Jacob Milgrom
Elizabeth C.	Commentary, by Jacob Milgioni373
LaRocca-Pitts	The View of Women Found in the Deuteronomic Family Laws, by Carolyn Pressler393
Carol Meyers	The Origins of Biblical Law: The Decalogues and the Book of the Covenant, by Calum M. Carmichael397
Fredrick E. Nix	Jesus and the Law, by Alan Watson401
Dale Patrick	The Alien in Israelite Law, by Christiana van Houten413
Chris A. Rollston	Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism, by Joseph Blenkinsopp419
Marilyn Salmon	Jesus and the Jews: The Pharisaic Tradition in John, by Alan Watson423
Brett G. Scharffs	Review Essay: The Impertinent Student and Stealth Prosecutor. The Genesis of Justice: Ten Stories of Biblical Injustice that Led to the Ten Commandments and Modern Law, by Alan M. Dershowitz427

Earl Schwartz	The Nine Commandments: Uncovering the Hidden Pattern of Crime and Punishment in the Hebrew Bible, by David Noel Freedman, Jeffrey C. Geoghegan &	
	Michael M. Homan	435
John Van Seters	Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien,	
	by Eckart Otto	439
Bibliography	Books in Jewish Laws and Ethics	445
	Books in Biblical Law and Religion	453