

# Law, Jewish

CATHERINE HEZSER

Ancient Jewish law mainly consists of rabbinic law, that is, the legal regulations promulgated by the rabbis of Roman Palestine and Babylonia between the time of the destruction of the Second Temple in 70 CE and the mid-fifth century. Rabbinic law is based on biblical law but constitutes a further development, innovation, and expansion in accordance with the changed circumstances and the particular interests and concerns of rabbis. In its combination of religious and civil law, rabbinic halakhah (from halakh, “to go,” i.e., practice, way of life) encompasses all areas of daily life except for the political realm, in which rabbis did not claim authority. The term “law” is not entirely appropriate for rabbinic teachings and instructions, since “law” is usually associated with an agreed-upon and binding system of rules. Rabbis’ recommendations were neither unanimous nor systematic or legally binding. Each rabbi expressed his views and had his own set of sympathizers and disciples who followed his advice. Therefore, a wide variety of legal opinions circulated orally in tannaitic and amoraic times. They were eventually transmitted in writing in rabbinic documents of Late Antiquity: the MISHNAH AND TOSEFTA, PALESTINIAN AND BABYLONIAN TALMUDS, and Midrashim.

The Torah (the five books of MOSES, also called the Pentateuch) already contains a large amount of legal material embedded in a narrative framework and formulated as divine instructions given to the Israelites through Moses as an intermediary. This legal material is mostly presented in apodictic form, providing unambiguous guidance in both religious and cultic matters (e.g., Sabbath and holiday observance; purity issues), that is, in matters concerning the relationship between God and humans, as well as social and economic regulations for the proper conduct of inter-human relationships (Fitzpatrick-McKinley 1999). The Torah already demonstrates that religious, social, and economic issues were closely

interwoven and that legal instruction could be transmitted in combination with stories and historical narratives (Carmichael 1985). The importance of legal matters in ancient Judaism is based on the covenantal relationship between God and Israel (the so-called Sinai covenant, see Exodus 19–24): the observance of divinely given law (believed to have been revealed to Moses at Sinai) sets the terms of the covenant and is required for its maintenance (Crüsemann and Mahnke 1996: 27–58).

In the Hellenistic period, Philo of Alexandria interpreted biblical law allegorically (*Legum Allegoriae*; *De Specialibus Legibus*, *De Decalogo*, *De Vita Mosis*), whereas some of the QUMRAN writings provide an eschatological interpretation of the Torah and the Prophets (Schiffman 1983). Different groups within ancient Jewish society developed their own legal rules (Shemesh 2009: 10–11). Torah law became especially significant in the Roman period, after the destruction of the Temple, when the newly developing rabbinic movement claimed a monopoly on its interpretation and applied it to various different circumstances of their own time and place. Rabbinic halakhah combines legal and narrative literary forms, as did its biblical prototype, but in RABBINIC LITERATURE the historical framework is missing (Simon-Shoshan 2012: 60–77). Instead of providing legal instruction in the context of God’s history with his people Israel, rabbis devised concise legal decisions and case stories on various cultic issues and aspects of daily life (on the relationship between biblical narrative and rabbinic law see Kanarek 2014).

Rabbinic legal instructions are mostly casuistic in nature. Like Roman jurists’ contributions to Roman law, rabbinic law can be considered case law that developed out of and provided rulings for specific situations and circumstances. Besides the more or less simple legal statement, the case “story” constitutes one of the main literary forms in which rabbinic legal material is transmitted (Hezser 1998: 581–95). Although some of these case stories may have been formulated in the course of rabbinic teaching and discussion and may be

theoretical only, others may be responses to requests to rabbis for legal advice, as Roman jurists answered petitioners' questions (*respon-dere*). In their literary form, these stories are very concise and contain only the details most necessary for understanding the cases. The case stories either illustrate halakhic statements or stand on their own, sometimes in opposition to legal propositions that are transmitted anonymously or are attributed to particular rabbis. Case stories can also be followed by hypothetical continuations in which variant circumstances are envisioned.

Rabbinic legal advice and teaching were not restricted to cultic matters but encompassed all areas of daily life. Thus, rabbis provided guidance in family matters (e.g., marriage and divorce); in matters of property and damages; in sales, loans, and legal documents; in inheritance and donations; in developing rules for agriculture and trade relationships; in the treatment of slaves, day laborers, and tenants; in purity issues concerning the body and household utensils; in the observance of the Sabbath and festivals; and in prayer and Torah reading in the synagogue (Cohen 1966; Hezser 2003). The all-encompassing nature of rabbinic law is based on the notion that in Judaism one's proper conduct in daily life is as religiously significant as prayer or other specifically cultic activities.

By formulating rules for all areas of daily life, rabbis asserted control over other Jews' private and public existence. However, this does not necessarily mean that they were able to exercise actual influence on people's lives. Each rabbi formulated his own rules on various issues, rules that differed more or less from those of other rabbis. People were free to consult any rabbi and then follow his rules – or disregard them. They could also ask a number of rabbis for advice and then follow the recommendation that suited them the most. Rabbis were basically private legal adjudicators, whose authority and influence depended on the respective individuals' trust in their expertise and personal allegiance to them (Harries

2010: 90–95). Therefore, rabbinic rulings cannot be considered proper “law” for the disobeying of which people were punished in an institutional context. Rather, rabbinic rules provided informal guidance in religious and (more or less minor) civic matters at a time when the major cultic institution (the Jerusalem Temple) had been destroyed and its leaders (the priests) had lost their power base (Hezser 1997: 450–97).

Rabbinic law is transmitted in so-called tannaitic documents (Mishnah, Tosefta, tannaitic Midrashim), which preserve the traditions of the tannaim, or rabbis of the first and second centuries CE, and in amoraic documents (Palestinian Talmud, Babylonian Talmud, amoraic Midrashim), which include traditions of both the tannaim and the amoraim, that is, rabbis of the first to the late fourth centuries CE. The Mishnah, Tosefta, and Talmuds are arranged thematically, albeit without following a systematic structure and arrangement. The Midrashim, on the other hand, arrange the material exegetically, following the structure of the Torah, and focus on specific biblical books (e.g., the Mekhilta on Exodus, Sifra on Leviticus). In all of these documents, the legal material is combined with narrative and exegetical traditions of a moral-theological nature. Historical or chronological concerns are absent from these documents (for an introduction to this literature see Stemmerger 1996; Fonrobert and Jaffee 2007).

SEE ALSO: Babylon; Jurisprudence, Greek and Roman; Philo Judaeus.

## REFERENCES AND SUGGESTED READINGS

- Carmichael, C. M. (1985) *Law and narrative in the Bible: the evidence of the deuteronomistic laws and the decalogue*. Ithaca.
- Cohen, B. (1966) *Jewish and Roman law. A comparative study*, 2 vols. New York.
- Crüsemann, F. and Mahnke, A. W. (1996) *The Torah: theology and social history of Old Testament law*. Sheffield.

- Fitzpatrick-McKinley, A. (1999) *The transformation of Torah from scribal advice to law*. Sheffield.
- Fonrobert, C. E. and Jaffee, M. S., eds, (2007) *The Cambridge companion to the Talmud and rabbinic literature*. Cambridge.
- Harries, J. (2010) "Courts and the judicial system." In C. Hezser ed., *The Oxford handbook of Jewish daily life in Roman Palestine*: 85–101. Oxford.
- Hezser, C. (1997) *The social structure of the Rabbinic movement in Roman Palestine*. Tübingen.
- Hezser, C. (1998) "The codification of legal knowledge in Late Antiquity: the Talmud Yerushalmi and Roman law codes." In P. Schäfer, ed., *The Talmud Yerushalmi and Graeco-Roman culture*: 581–641. Tübingen.
- Hezser, C., ed. (2003) *Rabbinic law in its Roman and near eastern context*. Tübingen.
- Kanarek, J.L. (2014) *Biblical narrative and the formation of Rabbinic law*. Cambridge.
- Neusner, J. (1988) *The Mishnah: a new translation*. London.
- Richardson, P. and Westerholm, S. (1991) *Law in religious communities in the Roman period. The debate over Torah and Nomos in post-biblical Judaism and early Christianity*. Waterloo.
- Schiffman, L. H. (1983) *Sectarian law in the Dead Sea Scrolls: courts, testimony and the penal code*. Chico.
- Shemesh, A. (2009) *Halakhah in the making: the development of Jewish law from Qumran to the rabbis*. Berkeley.
- Simon-Shoshan, M. (2012) *Stories of the law: narrative discourse and the construction of authority in the Mishnah*. Oxford.
- Stemberger, G. (1996) *Introduction to the Talmud and Midrash*, 2nd ed. Edinburgh (includes references to translations of many of the texts mentioned here).