CHAPTER I

Introduction: The Social Study of the Mishnah

"That is a good joke!" replied Don Quixote. "Books which are printed by royal license and with the approval of those to whom they are submitted, and which are read with universal delight and applause by great and small, poor and rich, learned and ignorant, plebeians and gentlefolk—in short, by all kinds of persons of every quality and condition—could they be lies and at the same time appear so much like the truth? For do they not specify the father, the mother, the family, the time, the place, and the actions, detail by detail, of this or that knight? Be silent sir, do not speak such blasphemies; and, believe me, if you take my advice you will be acting like a man of sense...." \(^1\)

The history of the Jews in Roman Palestine, indeed the history of Palestine in general, in the late second and third centuries CE is only poorly known. The Mishnah is one of the few texts of Palestinian origin from this period, and nearly the only Jewish one whose provenance and date are generally acknowledged as placing it squarely within this region and in this period. In addition, in contrast to literature written in Greek and Latin, and therefore capable of circulating widely within the Roman empire (and presumably written with this intention), the Mishnah was composed in Hebrew and therefore constrained to circulate primarily among Jews, and, in the first instance, in Palestine. The Mishnah therefore offers a remarkable opportunity for the study of how a highly articulate group (the Rabbis) within a subject people of the Roman empire presented itself to itself and to a local audience. This study focuses on tractate *Baba Mesi'a* of the Mishnah, which deals primarily with contracts of various kinds. Chapter III, which constitutes the heart of this project, is an attempt to tease out some of the implications of the tractate's depiction of social and economic relationships for an understanding of the history of later Roman Palestine. The purpose of this chapter is to provide the historical and methodological background for the study as a whole.

Some presuppositions which will be further explicated below, must be stated at the outset. First, we have few controls for the authority of early

Rabbinitic law. That is to say, there is no way of knowing the extent to which the legal practices of the Jewish population of Roman Palestine corresponded to Rabbinitic laws. Even if we were to grant that Rabbinitic law does reflect the common practice of at least a large portion of the Palestinian Jewish population, we would still not be in a position to determine whether that is because Rabbinitic authority directed legal praxis, or because Rabbinitic legal texts have recast after their own fashion the legal practices of the world in which Rabbis lived and worked. Second, the Mishnah is a literary artifact produced by Rabbis and expresses specifically Rabbinitic concerns. As a result, the Mishnah cannot be read as if it were a straightforward map of social relationships. Instead, the Mishnah offers depictions of these interactions informed and filtered by a particular world view. The ideological factors that shape this world view, of which explicitly religious or exegetical considerations are only one dimension, include more mundane notions such as dignity, property or fair play, and are firmly rooted in the way in which power and wealth were produced and distributed in Galilean society, and in the Rabbis' own place in that distribution.

A. Definitions and Historical Background

1. The Mishnah.
The Mishnah is a legal compendium produced by a religious group in roughly 200 CE and the first text of the Rabbinitic canon. Traditionally the final redaction of the Mishnah is ascribed to the circle of R. Judah the Patriarch (ha-nasi, "the prince"), in Galilee. This ascription, which fits with the rough chronology of those people cited as transmitting traditions within the Mishnah itself, as well as traces in the Mishnah and elsewhere for a Galilean provenance of the latest of these tradents, has never seriously been challenged. Thus, in contrast to the other texts that purport to present "Tan-
naitic” material, about whose respective dates and origins there is a variety of opinions, the Mishnah is relatively firmly fixed in time, place, and redactional setting. For that reason, this study takes early Rabbinic civil law as it is depicted in the Mishnah as its point of departure. At the same time, extra-Mishnaic literature, both “Tannaitic” and “Amoraic,” offers a wealth of complementary, contradictory and exegetical material that is essential for elucidating the Mishnah itself, as well as some of the range of possible opinions and conflicts that are not necessarily expressed in the Mishnah.

The Mishnah as a whole is divided into six sedärím (“orders”) which are in turn subdivided into massekôt (“webs [on a loom]”), or tractates. The orders are as follows: (1) Zērā’îm, “Seeds,” dealing primarily with agricultural gifts to the poor and to priests, and including one tractate on blessings and prayers; (2) Mō qed, “Appointed Times,” concerned with rules for festivals, overwhelmingly centered on the cult of the Jerusalem Temple; (3) Nāšîm, “Women,” which, in addition to treatment of marriage, divorce, and special levirate marriages, includes special tractates on vows, nazîrite status, and the ordeal of a wife suspected of adultery; (4) Nēṣiqîn, “Damages,” including three tractates on “private” law (e.g., damages, contracts, property), another on the relations between Jews and gentiles, a series on courts and oaths (including those taken in a judicial context), and two miscellanies; (5) Qoďašîm, “Holy Things” concerned with the Temple and its cult; and (6) Tohorôt, “Purities,” the longest of the six, dealing with ritual purity. The present study focuses on one of these tractates, m. Bāba’ Čeeṣi’a, “The Middle Gate,” in the order of Damages. This tractate is the second of the three private law tractates which seem originally to have made up a single

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4 The Rabbis who lived before the first decades of the third century CE are traditionally known as tannā’îm (“reciters”) and those who lived after are known as ’amārā’îm (“staters”); hence the conventional periodization “Tannaitic” and “Amoraic.” Outside of the Mishnah, “Tannaitic” material is presented in one of two types of texts: (a) texts that are themselves “Tannaitic” (i.e., they attribute statements almost exclusively to tradents who are dated to before the third century), namely the Tosepta and the Halakic Midrashim; (b) bāratîtōt (“external [i.e., extra-Mishnaic ‘Tannaitic’] traditions”) cited in Amoraic texts, namely the Yerushalmi (Palestinian Talmud) and Babli (Babylonian Talmud). The relationship of m. Bāba’ Čeeṣi’a to the Tosepta and the various Halakic (“Tannaitic”) Midrashim with which it overlaps is briefly discussed in Appendix II. For the various dates of the “Tannaitic” texts see the relevant headings in H. L. Strack, Introduction to Talmud and Midrash, ed. G. Stemberger, tr. M. Brokmuehl (Minneapolis: Augsburg Fortress, 1992). The bāratîtōt of the Yerushalmi and Babli come by definition from post-Mishnaic contexts, and, according to some scholars and particularly in the case of the Babli, reflect Amoraic reworking at the very least (see Appendix II, n. 1).
tractate *Nēziqîn*. Hence the name: the middle gate is preceded by a first gate (*m. Baba*’ Qamma) and followed by a last gate (*m. Baba*’ Batra). M. Baba* Mesîa* itself consists of rules for lost objects, deposits, sale, loans of various kinds, hiring and leasing of labor and property, and conflicts arising between neighbors.

In terms of genre, the Mishnah is difficult to pin down. It is, like other ancient texts, an anthology of sorts. Although laws were an important area of speculation and literary activity in ancient Judaism, the Mishnah is rather unlike pre- (or non-) Rabbinic Jewish texts: it neither retells nor mimics the Bible, putting its words in the mouth of some ancient prophet, patriarch or sage; it is not explicitly and formally a work of exegesis of Scripture; and, unlike the “law codes” associated with the Qumran community (the Manual of Discipline and the Damascus Covenant), the Mishnah does not have a single authorial and authoritative voice. It is, instead, a highly stylized presentation of legal materials punctuated by disputing opinions, and at times full-blown debates. In some ways its closest analogue is the sixth-century Digest of Justinian, since in that text, too, legal traditions of various origins are collected, organized by headings, and brought “up to date.” On the other hand, the Digest is explicitly the result of a literary undertaking and the editors have identified the authors and books from which the material is

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5 In the Kaufman, Parma and Cambridge (Lowe ed.) manuscripts of the Mishnah, and in the Genizah fragment published by Ginzberg the chapters are numbered sequentially through all three tractates, although in the Cambridge ms. Chapter 11 (i.e., *m. B. Mes. 1*) is labeled *Babd* tinyânâ (“second gate”). The Escorial ms. of the Palestinian Talmud on these three tractates uses both systems of numeration. (For references to these mss., see Appendix I.) The stamaitic explication of an Amoraic debate in *b. B. Qam.* 102a (*b. Ab. Zar. 7a*) already presupposes the separation of the three bâbôt, but attributes the view that the three make up a unit to one of the disputants. *Lev. Rab.* 19.2 (Cant. Rab. 5:8, to 5:11) states, as an example of the vastness of Torah, that tractate *Nēziqîn* has thirty chapters. See Epstein, *Nîsâh*, 982–3.

6 Compare the analogous division of tractate *Kelim* in the Tosepta into three “gates.”

7 The entire text of the tractate is transcribed, together with a translation and annotation, in Appendix I.

8 I am grateful to Prof. Eliezer Diamond of the Jewish Theological Seminary of America for reminding me that the comfortable dichotomy between Second Temple Jewish literature (either mimicking or commenting on Scripture) and the Mishnah (utilizing its own organization and language) is overly simplistic. The “newness” of the Mishnah as a genre and text nevertheless remains.

9 See, e.g., F. Schulz, *A History of Roman Legal Science* (Oxford: Clarendon, 1946), 318–22; H. F. Jolowicz, *A Historical Introduction to Roman Law*, ed. B. Nicholas (Cambridge: Cambridge, 1972), 480–92. The problem of “source criticism” in the Digest (i.e., the incorporation of pre-formed masses of material into the work, apparently through the work of committees), and the process of “interpolation” offer important grounds for comparison with the Mishnah.
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excerpted. By contrast, although the Mishnah does attribute views to individuals in the case of disputes, it does not label its sources. At the same time, by incorporating and speaking through disparate (and occasionally contradictory) source material, the Mishnah effaces the individuality or authority of the composers or arrangers of material (see further Chapter II). Moreover, the Mishnah may have emerged in a pointedly oral setting, despite the fact that Roman Palestine had a long history of literate culture and that Rabbis themselves participated in that culture, at least to the extent of their study of a written Scripture, and their comfort with, and on occasion insistence upon, written deeds. This too may have contributed to the form of some of the material in the Mishnah (e.g., the use of mnemonic devices), as well as the organization of the Mishnah as a whole as a kind of single but multivo­cal, codified “tradition” rather than a collection of extracts from books.\(^{10}\)

2. The historical background.

There is a largely conventional narrative history of the Rabbinic move­ment in Roman Palestine: in the wake of the destruction of the Jerusalem Temple in 70 a new center in Yabneh (Iamnia) was founded by R. Yohanan b. Zakkai, and later was led by R. Gamaliel (II). The group of sages (who were now identified by the title “Rabbi”) who met at Yabneh set about (according to the particular reconstruction, more or less effectively) rebuild­ing the national and religious life of Palestinian Jewry. In the wake of the Bar Kokhba revolt, the Rabbinic movement, in fits and starts, regrouped in Galilee, eventually under the leadership of R. Simeon b. Gamaliel, and worked towards restoring centralized governmental institutions led by Rabbis, although always in some conflict with the wealthy elites of Palestine. A cen­tralized Rabbinic organization reached the height of its authority under the leadership of R. Judah the Patriarch, whom we have met above as the figure

\(^{10}\) The problem of orality and literacy in early Rabbinic literature is beyond the scope of this study. I wish to point out, however, that analytically, and perhaps historically as well, the problem of orality as a mode of transmission (either parallel to written preservation of the Mishnah, as was suggested in different ways by Z. Frankel, *Darkê ha-mišnâ* [Leipzig, 1859], rev. ed. I. Nusbaum [Tel Aviv: Sinai, n.d.], and Albeck, *Mabo* [Leiden: Brill, 1978], 153—97). At any rate, the repertoire of technical terminology and typologized stories of study and transmission all have oral referents: reciting a tradition, sitting before a sage and hearing, asking a sage; but whether this really presupposes oral transmission remains open.
traditionally credited with the redaction of the Mishnah. Afterwards, the Patriarchate became increasingly “secularized” and beholden both to the urban elites and the Roman government. The Rabbis were relegated to a more “religious” role as teachers but were able nevertheless to be effective judges and leaders of the people, as well as to exert considerable pressure on the elites and the Patriarch to observe their norms.¹¹

In the present study, I have purposely avoided such narrative reconstructions. Rabbinic stories are typically brief (rarely longer than a few paragraphs), and are told for a variety of purposes of which none corresponds to the modern project of historiography. To string these episodic narratives, which are scattered about the Rabbinic canon in works of various date and provenance, into a single coherent narrative is to risk inventing histories out of the narrative intentions and choices of Rabbinic narrators, tradents and redactors. Moreover, these stories can be contradictory. Thus, only in one version of the story of the removal of R. Yohanan b. Zakkai to Yabneh is the Rabbi credited with founding a Rabbinic center there;¹² in another pair of sources the general/emperor allows R. Yohanan at most to teach his own disciples there as a personal boon;¹³ in still a third version, Yabneh is not mentioned at all.¹⁴ In sum, the historian is forced into a potentially thankless search for “historical kernels” whose plausibility is measured against the limits of his or her own credulity.¹⁵

¹¹ The reconstruction is roughly that of G. Alon, Töldös ha-yehudim bë-eres yiśræ‘el bi-teqüpat ha-mišnà u-wë-ha-talmûd (Tel Aviv: Hakibutz Hameuchad, 1953–7). Although an English version of this work has appeared (The Jews in their Land in the Talmudic Age, tr. G. Levi [Jerusalem: Magnes, 1980–4]), it has been substantially reworked (not always for the better) and much detailed discussion has been omitted. I therefore cite the Hebrew edition throughout.

¹² See b. Git. 56a-b: “Give me Yabneh and its sages, and the chain [i.e., the hereditary line] of R. Gamaliel, and doctors to cure R. Sadoq.”

¹³ ‘Abot R. Nat., version A Ch. 4 (ed. Schechter, p. 23): “... that I might teach my disciples there ... ;” cf. version B Ch. 6 (ed. Schechter, p. 19): “... that I might study (‘elmod) Torah there ....” Based on the reading of Version B printed in Schechter (‘ìmud, rather than ‘ìnmd which can be pointed ’alamèd, “(I will) teach”), R. Yohanan b. Zakkai does not even ask for the ability to teach disciples.


¹⁵ In the example cited above, not only are there multiple versions of the story, but all are difficult to reconcile with the chronology of the war (most notably that Titus and not Vespasian
Nevertheless, since much of the ensuing study of *m. Baba*\^2 Mes'\^2a\^2 presupposes a particular interpretation of the history of Roman Palestine and the place of Rabbis in it, some discussion of this background is necessary. The two centuries between the middle first and middle third centuries CE saw the transformation of Roman Palestine. On the level of imperial and governmental politics, the most significant development was the transition from client kingdom to garrisoned province. During the first part of this period there were at least two major Palestinian Jewish revolts against Rome (66–70 CE and 132–5). Information for the second part of this period is less full,

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16 In addition to the material cited below, see, for all the following, F. G. B. Millar, *The Roman Near East* (Cambridge: Harvard, 1993), 337–86 and much of part I; B. Isaac, *The Limits of Empire* (Oxford: Clarendon, 1990), 78–96, 104–18 and *passim.*

17 The last Roman experiment with governing the bulk of Herod’s kingdom as a client kingdom was in the last years of Agrippa I (44–6 CE); in addition to Gaulanitis, Trachonitis, Auranitis, and other territories, part of Galilee was given to Agrippa II who remained a major player in first-century Judean politics (see E. Schürer, *A History of the Jewish People in the Age of Jesus Christ*, rev. ed. G. Vermes, *et alii* (Edinburgh: T. and T. Clark, 1973–87), 1, 472–3; S. Schwartz, *Josephus and Judean Politics* (*Columbia Studies in the Classical Tradition* 18: Leiden: Brill, 1990), 114–9.

but based on the evidence that remains, revolts ceased.\textsuperscript{19} It seems plausible that Jews in Palestine, like other populations, supported Avidius Cassius against Marcus Aurelius in 175.\textsuperscript{20} The conflict between Septimius Severus

\textsuperscript{19} Cf. the reference in \textit{SHA Ant. Pius} 5.4, referring, in the context of the reign of Antoninus Pius (138–161), to: “Germans and Dacians and many nations and also the Jews, who were rebelling.” This is sometimes connected to the rescript of Antoninus Pius permitting Jews to practice circumcision (referred to in D 48.8.11 [Modestinus]; cf. Paul, \textit{Sententiae} 5.22.3–41; texts and discussion in A. Linder, \textit{The Jews in Roman Imperial Legislation} [Detroit: Wayne State, 1987], 99–102, 117–120), that is, as an effort to soothe tensions in Palestine. See the discussion by M. Stern, \textit{Greek and Latin Authors on Jews and Judaism} (Jerusalem: Israel Academy of Arts and Sciences, 1976–84), 2, 622–3, who seems to approve of the association between the Jewish “revolt” and the law on circumcision. E. M. Smallwood, “The Legislation of Hadrian and Antoninus Pius against Circumcision,” \textit{Latomus} 18 (1959), 341, favored a late date for the revolt (after 145, and perhaps around 156 [p. 341 n. 3]), but a date early in Antoninus’ reign for the rescript; later (Smallwood, 1981, 467–9), Smallwood seems to accept an early date for both events and takes the “revolt” as perhaps “no more than local disorders and demonstrations of protest, easily magnified” in later historiographic tradition (p. 468). Alon, 1953–7, 2, 60–3, took the notice of this revolt as evidence of continued tensions in Palestine stemming from economic and geographical dislocation and concomitant economic and political banditry, as well as a continued policy of persecution well into the reign of Antoninus. The information comes to us as the barest notice, in a catalogue of other wars and revolts successfully fought by Antoninus. Moreover, although the early lives of the \textit{SHA}, including that of Antoninus Pius, are based on good information (R. Syme, \textit{Emperors and Biography: Studies in the Historia Augusta} [Oxford: Clarendon, 1971], 37–41[“Ignotus, The Good Biographer”]; T. D. Barnes, \textit{Sources of the Historia Augusta} [Collection Latomus 155: Brussels, 1978], 37–78, esp. 39–48), the possibility of fiction cannot be denied (Barnes, pp. 47–8). Thus, no far-reaching conclusions are possible.

Also problematic, and possibly spurious, is the reference to a “Jewish triumph” permitted to Caracalla. See \textit{SHA Septimius Severus} 16.7: Severus gave his son (Caracalla) permission to celebrate a triumph \textit{cui senatus Iudaicum triumphum decreverat idcirco quod et in Syria res bene gestae fuerant a Severo} (“for whom the Senate had decreed a Judean (Jewish?) triumph because of the military successes attained by Severus in Syria”). H. Graetz, \textit{Geschichte der Juden} (Vienna, 1853–76), ed. Fr. Rozenthal (Leipzig, 1893), vol. 4, 208, connected it with a victory over the brigand Claudius (see below). Others referred the triumph to the Samaritan and Judean war mentioned by Jerome (see below n. 22). M. Avi-Yonah, \textit{The Jews of Palestine: A Political History from the Bar Kokhba War to the Arab Conquest} (Blackwell’s Classical Studies: Oxford: Blackwell, 1976), 79, taking \textit{Iudaicus} as “Jewish” but not “Judean” referred this notice to the defeat of Adiabene in the context of the Parthian war. Still others have simply rejected the notice: so Alon, 1953–7, 2, 103; Stern, 1976–84, 624–5; Smallwood, 1981, 489 n. 11; in A. R. Birley, \textit{The African Senator: Septimius Severus}, 2. ed. (London: Batsford, 1988) the triumph “may be an invention of the \textit{HA}” in the text (p. 134), and is “highly doubtful” in the notes (n. 11 on p. 250).

\textsuperscript{20} See the remark attributed to Marcus Aurelius that “Cilicians, Syrians, Jews, and Egyptians” could not defeat a Roman army (Dio 71.25.1). Stern noted that the passage “may suggest that Jews still occasionally served in the Roman armies” (Stern, 1976–84, 2, 406); and
and Pescennius Niger may have been played out on the local level in Palestine, and it is just barely possible that a "Jewish and Samaritan war" mentioned by Jerome refers to support that these Palestinian populations gave to Severus. This might help explain the apparently exceptionally good relations between the Severan emperors and the Palestinian Jewish community (see below). If, like other local populations, Palestinian Jews took sides in

Smallwood thought this was evidence of local levies to supplement the legions supporting Avidius Cassius (Smallwood, 1981, 482). However, it is precisely the casting of the opposing forces as local and provincial that seems to be at issue. Cf. SHA M. Ant. 25.6-11; Avidius Cassius 8.1-4 for the leniency of Marcus Aurelius in the wake of the revolt during his visit to Syria and Egypt (for which see also Dio 71.27.3), and in which special emphasis is laid on that emperor's treatment of Antioch, Cyrrhus (Avidius Cassius' birthplace), and Alexandria.

SHA Septimius Severus 9.5: Neapolis lost civic rights due to the revolt of Niger. There is indeed a gap in coinage from Neapolis from Commodus to Julia Domna (and Caracalla) (Hill, BMC Palestine, 58, nos. 84-5). If this gap corresponds to a period when the city lost civic rights (cf., however, the gap in coinage at Sepphoris, for which there is no evidence for such a loss of status), the resumption of coinage, and the restoration of the city, may predate the death of Severus (Smallwood, 1981, 487-8, and 490 n. 13; the identification of Julia Domna as Ioulia Domna Seb(aste) [i.e., Iulia Domna Augusta] corresponds to her titulature under Severus). It is perhaps to this restoration (and others?) that SHA Septimius Severus 14.6 refers: Severus rescinded the penalties imposed on the Palestinians on account of Niger (so Stern, 1976-84, 623). By contrast Sebaste (Samaria) was elevated to colonial status under Severus: D 50.15.1.7 (Ulpian). (The dating of this grant is uncertain: the last non-colonial coin is a coin of Septimius Severus, year 226 according to the urban era [Hill, BMC Palestine 79, no. 11; Meshorer, 1984, no. 116], giving a terminus post quem for the change in status between 199 and 201: Schürer, Vermes, 1973-87, 1, 290 n. 9, argues that the foundation is to be put in 25 BCE, following Josephus Ant. 15.292-8 referring to the thirteenth year of Herod; 27 BCE [the date Octavian took the title Augustus (Sebastas), whence the name for the city] is the date favored by Smallwood, 1981, 77 n. 55; 490 n. 14. The earlier date would allow for the coordination of the re-founding of the city with the visit of Septimius Severus). It is possible that Caesarea, upon whose coins the titles felix and constans (or concordia) appear beginning with Septimius Severus, also was given these titles due to its support for Severus (L. Kadman, CNPii Caesarea, 46 and no. 63). It has been argued from the fact that the legion VI Ferrata (stationed during the second and third centuries at Kaparkotna [later Legion]) was given the titles fidelis constans that it remained loyal; by implication it might seem that the legion X Fretensis at Jerusalem did not (Ritterling, PW, s.v. Legio, 12, 1312-3, 1592-3, who, connecting this with the "Jewish Samaritan war" in Jerome, suggested that the legions became embroiled in a local conflict). Palestine is not unique in this respect. In this conflict inter-city rivalries in the east played themselves out through the support of one or the other claimant. See, e.g., Herodian 3.2.7-9 (Nicaea and Nicomedia), 3.3 (Laodicea and Antioch, Tyre and Berytus); see also Dio 75.8.3-4, SHA Severus, 9.3-11 (Smallwood, 1981, 487 n. 4).

Iudaicum et Samariticum bellum motum (Eusebius, Chronica, GCS 7, 211, dated by Jerome to year five of Septimius Severus, i.e., 197). The chronology has been questioned. Smallwood, 1981, 488, n. 7 suggests that events of the first Parthian war (195) have been dated in the Chronica to the second (6-8 of Septimius Severus, 197-9), so that redating the whole
wider conflicts involving the imperial government, we should not characterize this period as one of political quietism. Yet that same Jewish population was either unwilling or unable to motivate the resources and ideological will for full-fledged revolts proclaiming the “liberation of Israel” or the “redemption of Jerusalem.”

The Severan period in Roman Palestine is frequently seen by modern scholars as peaceful and as one of excellent relations between the Jewish population of Palestine and the Roman government, and for this Jerome already provides some attestation. A unique inscription (possibly from a temple) that can be dated to approximately 197, in fulfillment of a vow by Jews (reading [...ex] εὐχῆς Ιουδαίων), records a dedication “for the salvation of...
our lords, emperors, caesars ...,” and lists the members of the royal family.25 It has sometimes been argued that in the wake of the revolt under Hadrian the Jews were displaced from the urban governments of the cities of Palestine, particularly from the administration of Sepphoris and Tiberias in Galilee.26 The argument is dependent upon explicitly pagan coin iconography on city coins, and takes for granted what Jews would have been willing to depict on their coins, and is thus hardly decisive. If such a policy existed, a law (or laws) of Severus and Caracalla which grants Jews permission to serve in civil governments and requires them to perform liturgies might be taken as its reversal.27 If, in the early years of the third century, Jews did control the civic government of Sepphoris, two coin types from the reign of Caracalla proclaiming the city the loyal friend and ally of Rome, would provide striking
attestation of the outwardly good relations between that Jewish population and the imperial government.28

The redaction of the Mishnah in about the year 200 coincides with the political transformation of Palestine. But these political and military changes had social and religious implications as well. The two wars had left the Jerusalem Temple destroyed and its cult abandoned. The priestly class—a hereditary aristocracy that had ruled Jerusalem, which in turn had dominated all of the province of Judea—was, by 200, on its way to becoming an aristocracy in name alone. Not only was a Roman city built on the site of Jerusalem (Aelia Capitolina), but urbanization progressed in Palestine more generally,29 and this progress may be expected to have placed power on the local

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28 A large bronze medallion from the reign of Caracalla added to the now customary legend "holy, autonomous, having right of sanctuary (asylos)" the words "loyal, friend and ally of the holy assembled (synkletos appears in one type only) Senate and people of Rome (IER(as) Boules Synkletou) D(romaion)". For the coins see Y. Mesherer, The City Coins of Eretz-Israel and the Decapolis in the Roman Period (Jerusalem: Israel Museum, 1984), 36–7. I follow the reading of C. M. Kraay, "Jewish Friends and Allies of Rome," ANS Museum Notes 25 (1980), 56–7, against Y. Mesherer, "The Coins of Sephoris (sic) as a Historical Source" [Hebrew], Zion 43 (1978), 194–9; idem, "Sepphoris and Rome," Greek Numismatics and Archaeology: Essays in Honor of Margaret Thompson (Brussels: Cultura, 1979), 166–71. Mesherer reads the coins as commemorating a treaty between the holy boule (council) of Sepphoris (which Mesherer further identifies with the Rabbinic Sanhedrin), and the synkletos (Senate) and people of Rome. (Mesherer is followed by Y. Ne’eman, “Sepphoris in the Period of the Second Temple, Mishna and Talmud” [Diss. Hebrew University, 1987], 188–9 [Ne’eman has given the expansion for the legend of his no. 10 under no. 9 and of no. 9 under no. 10]; see also E. M. Meyers, “Roman Sepphoris in Light of New Archeological Evidence and Recent Research,” in Levine ed., 1992, 327.) This reading seems highly unlikely: for synkletos boule referring to the Roman Senate (in second- and third-century texts, both literary and documentary, and especially in the Severan period), and for the adjective "holy" applied to it, see H. J. Mason, Greek Terms for Roman Institutions (ASP 13: Toronto: Hakkert, 1974), 121–4. The full expression hiera boule synkletos appears in a context in which it must refer to the Senate of Rome: IG XII.1 786 (from Lindos in Rhodes): "By the decrees of the emperors among the gods and of the holy assembled Senate of Rome" (hypo tôn en theois autokratorin kat tôn tès hieras boules synkletou dogmatōn).

level in the hands of urban elites—a status based on wealth, and hereditary in this period only to the extent that wealth could be maintained between generations—rather than in the centralized hands of a client king, high priest or Roman governor, or their local appointee. The emergence in the third century of synagogues that were institutionalized and architecturally distinctive enough to leave recognizable traces in the archeological record suggests that the localization of power in the Palestinian countryside was mirrored by the rise of local religious institutions. These synagogues, so far as the inscriptions can show, were built, and presumably run, by local lay leaders and not by priests.

3. Rabbis in Palestine.

The rise of the Rabbinic movement during the period between the first and the third centuries is itself symptomatic of the changes in Palestinian Jewish society, since it reflects the emergence of an articulate, self-conscious group of non-priestly sages and disciples who take it upon themselves to collect, guard or construct the tradition of the world of the Temple, and to dictate (with what success we cannot know) the terms of the management of everyday life (e.g., marriage, contracts, torts). Nevertheless, outside of Rabbinic sources we know precious little about Rabbis. It is by no means clear that Palestinian Jewish inscriptions using the title “Rabbi” (“my master”) are

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32 For the inscriptions see Lapin, Text, Money and Law, Chapter III.A.2; Palestinian epigraphy was also the subject of a paper presented by me at the 1994 SBL/AAR annual meeting. I hope to return to this subject in the near future.
33 There seems to be little reason to doubt that Rabbis could link their “pedigree” to other non-priestly groups, notably the Pharisees, who predated the destruction of the Temple in 70 CE. Rabbinic traditions link the “patriarchal” house with first-century Gamalielites, who may plausibly be identified with the Gamaliel and Simeon b. Gamaliel known from Acts and from Josephus. The treatment of various legal topics, especially cultic, may stem from controversies from before 70: see, for instance, the preliminary discussions about a controversial Qumran text named miqpat ma‘aseh ha-tord (now published as DJD X). However, the connection is
not using an honorific with no specific connection with learning in general or affiliation with the Rabbinic movement in particular. Hence these inscriptions may tell us nothing about the role Rabbis played in the social world of late Roman Palestine. Classical writers who refer to Palestine in this period provide no information about the internal politics and government of the region or its cities, nor, by extension, about the Rabbinic institutions that are the primary concern of this study. To state on the basis of this evidence that Rabbis had no significance in the society of Roman Galilee is, of course, to argue entirely from silence. What is striking, however, is that it is not until the late fourth century that the Patriarch (if this is still to be identified as a "Rabbinic" institution in that period) is referred to by a non-Christian writer, much less a correspondent of someone of the status of Libanius. In Roman legal texts as well, the first unambiguous reference to the Palestinian Patriarch is dated to 392, and it is only from the fourth century not quite as explicit as one might have expected, as S. J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism," HUCA 55 (1984), 36-42, has pointed out. In other words, there existed non-priestly religious groups with claims to authority and greater or lesser appeal (note also Josephus' "fourth philosophy"; BJ 2.118; Ant. 18.4; and the two sophistai who spark an act of pious vandalism against the Temple during Herod's last days: BJ 2.248-55; Ant. 17.149-163), and a certain amount of continuity between pre- and post-revolt groups. Similarly, synagogues are already attested in first-century Palestine (see L. I. Levine, "The Second Temple Synagogue: The Formative Years," in L. I. Levine, ed., The Synagogue in Late Antiquity [Philadelphia and New York: ASOR and JTSA, 1987], 7-31). Nevertheless, sectarian disputes and localized religious gathering places in the period before 66-70 arose in the interstices of a firmly entrenched Temple-based piety.

34 S. J. D. Cohen, "Epigraphical Rabbis," JQR 72 (1981), 1-17; see also H. Lapin, ABD s.v. "Rabbi;" and the section of Text, Money and Law cited above, n. 29.

35 For the separation of the "Rabbinic" Sanhedrin from the "secular" patriarchate see Alon, 1953-7, 148-51; A. Oppenheimer, "Batei Midrash in the Early Amoraic Period" [Hebrew], Cathedra 8 (1978), 80. Cf. H. Mantel, Studies in the History of the Sanhedrin (Harvard Semitic Series 17: Cambridge: Harvard, 1961), 244-52, who argues against Alon's basic thesis of conflict (and subsequent division) between these two institutions, although the passages cited to show that fourth-century Patriarchs "were anything but mediocre" (p. 252, by which Mantel apparently refers to their quality as Rabbinic sages), do not address the problem: these nearly all refer to the Patriarchs' secular wisdom and political clout, but not the study of Torah. As Alon himself notes, however, the division should not be made too sharply. Although Epiphanius, Panarion, 30.7.2-3 (GCS 25, 342), can report on the immorality of the lifestyle of the young patriarch (cf. Jerome, Com. in Esaiam (3.4, CCSL 73, 49), he also knows that what the apostoloi of the patriarch do is sit with him regularly, night and day (cf. Josh. 1:8; Ps. 1:3), "in order to advise and report (?) to him according to the law (dia to symbouleuein kai anapherein auti kata ton nomon)," 30.4.2 (GCS 25, 338).

36 Libanius, Epistulae 917, 973, 974, 1084, 1097, 1098, 1105. See also the letter of the emperor Julian to the Jews (Ad communitatem Iudaeorum), who is writing in his official capacity as emperor, and in any case is more properly regarded as "post-Christian" than "pagan."
that we can point to evidence for Patriarchs controlling the Jewish communities in Palestine and beyond.\textsuperscript{38} By this time, the position of Jews had become complicated by the fact that the existence of semi-autonomous Jewish

The emperor refers to the patriarch as “my brother Ioulos the venerable patriarch.” For questions as to the authenticity of this letter see Stern, 1976–84, 2, 508–10. See also the putative “letter of Hadrian” cited in SHA Quadriga Tyrannorum 8.4, which refers to a “patriarch,” apparently “the” Jewish Patriarch. Syme, 1971, 17–29 (“Ipse ille patriarcha”), has persuasively dated this “letter” to the late fourth century.

\textsuperscript{37} CT 16.8.8 (Theodosius, Arcadius, Honorius, 392): primates who hold authority from the renowned and illustrious (\textit{viri clarissimi et illustres}) patriarchs are upheld as the only ones able to expel Jews from the community. More problematic is the law of Constantine (dated 329–30) which seems to be preserved in two versions: CT 16.8.2 (to the praetorian prefect) and 16.8.4 (to the leaders of the Jewish communities). The first (“public”) version grants exemption from curial duties to “those who with total dedication have devoted themselves to the synagogue of the Jews, to the patriarchs or to the elders, and living in the aforementioned sect preside over the very law.” These “patriarchs” are best taken as local officials (cf. CT 16.8.13 [397] in which those subject to the “illustrious patriarchs” are termed “archisynagogues, patriarchs, presbyters and others;” A. Linder, “The Roman Imperial Government and the Jews under Constantine” [Hebrew], Tarbiz 44 [1974–5], 119–20, following Mommsen and others, recommends emendation or excision of the second “patriarchs”). If Linder, 1974–5, 123–6, is correct that the goal of Constantine in CT 16.8.2, 4 is to institutionalize a Jewish “clergy” parallel in some respects to the Christian hierarchy (cf. the more explicit notice in CT 16.8.13), might not a localized “diocesan,” rather than a highly centralized model be presupposed? Similarly, another law of Constantine, in which the emperor informs “the Jews, their great men (\textit{maiores}), and patriarchs,” to know that the persecution of converts is prohibited (CT 16.8.1; CJ 1.9.3), seems again to refer to local officials (i.e., to the Jews in their communities, however they are governed). For the so-called “minor patriarchs” (i.e., local synagogue officials by that title) see J. Juster, \textit{Les Juifs dans l’empire romain} (Paris, 1914), I 402–5, with A. M. Rabello, “The Legal Condition of the Jews in the Roman Empire,” ANRW 2.13 (1979), 717, n. 230. See also Mantel, 1961, 203–6, and n. 219. The existence of these local patriarchs has been denied: see Linder, 1974–5, 119–20; idem, The Jews in Roman Imperial Legislation (Detroit: Wayne State, 1987) 130, n. 12 (“highly conjectural”).

In CJ 3.13.3 (293) Diocletian issues a rescript to one luda ruling that the decision of an unofficial judge chosen by the parties does not have the authority of a verdict by an official judge. Some scholars have taken this rescript as addressed to the Patriarch Judah III, and as supporting the authority of the patriarch alone to appoint official judges (see the literature cited in Linder, 1987, 114–7; and L. I. Levine, “The Patriarch (Nasi) in Third Century Palestine,” ANRW 2.19.2 [1979], 682–3). The identification of this luda with the Patriarch cannot be proven, however (G. Alon, “Those Appointed for Money” [Hebrew], in Alon, 1976), 2, 55–7 [Appendix] = idem, 1977, 433–5), and this piece of information is probably best left out of consideration. Even granting the identification, however, it is not clear that this rescript is intended to bolster Patriarchal authority rather than weaken it: Diocletian might consider all Rabbinic verdicts as merely private arbitration.

\textsuperscript{38} Cf. the account of the \textit{comes} Joseph in Epiphanius, \textit{Panarion}, 30.11.1–5 (GCS 25, 346) (written in the 370s about events taking place considerably earlier): Joseph is sent by the patriarch to collect the patriarchal tax in Cilicia, and while there exercises his authority to depose
communities in the Roman empire constituted not only an administrative problem but a theological one as well, so that it is difficult to retroject information pertaining to this late period to earlier centuries.39

For the second and third centuries, the period during which the Mishnah was produced, we are on far shakier ground. If the Jewish teachers of Justin Martyr's *Dialogue with Trypho* are not merely Justin's invention building on New Testament polemic, they might perhaps be identified with the Rabbinic movement, although in that case we learn primarily about opposition by Rabbis to Christianity and only indirectly, if at all, about their organization and history.40 Of greater importance is the testimony of Origen from the first half of the third century. Origen mentions Jewish traditions that sound like Rabbinic teachings, even if they cannot be precisely identified, suggesting that Rabbinic teaching was spreading beyond a limited circle of disciples and adherents.41 More problematic are his references to individuals "styled wise (sophos) among the Jews," and especially to a "patriarch" named Ioullos, who has frequently been identified with a member of the patriarchal

39 It is at least in part for this reason that Jews (and their leaders) emerge as a topic for legislation after Constantine. See the table of laws regarding Jews listed in Linder, 1987, 91–4: of sixty-six laws cited, only six precede the reign of Constantine.

40 See, for instance, Justin, *Dialogue with Trypho* 112.4–5 in which Justin attacks the teachers of the Jews for their (very Rabbinic-sounding) exegeses of Scripture that misperceive the truth of the Bible, and connects these teachers with those called "Rabbi," but with explicit citation of the polemics against the Pharisees in Matthew 23. S. J. D. Cohen, 1984, accepts the identification of these teachers with Rabbis (p. 52 and n. 70) and argues that the depiction by Justin of an orthodoxy among Jews (pp. 34–5, 49) reflects an emerging Rabbinic ideology whose origins Cohen traces to the Yavnean period.

41 Origen, Commentary to Song of Songs, Prologue, *GCS* 8, 62, who mentions Jewish rules not to teach certain passages of the Bible freely (cf. *m. Hag.* 2:1 and related texts). If the reference to *deuterôsis* properly means Rabbinic traditions (i.e., to the Hebrew *miśnâ/miśnîh*, cf. Epstein, *Siprut*, 17–18), this particular passage, which comes down to us only in a fourth-century Latin translation, appears garbled since in context *deuterôsis* refers to passages in Scripture (*ommnes scripturas ... tradis pueros, simul et eas quas deuterôsis apellant ad ultimum ... observare, “all the Scriptures ... are given to children, while those they call deuterôsis ... they guard until the end”*). (N. M. R. de Lange, *Origen and the Jews* [Cambridge: Cambridge University, 1976], 163, n. 66. For Origen's knowledge of Rabbinic tradition see de Lange, 1976, *passim*, and, in addition, R. Kimelman, "Rabbi Yohanan and Origen on the Song of Songs: A
family. Of all the evidence for Rabbis and Rabbinic institutions in Origen's writing, however, the most tantalizing is his description of how the "ethnarch" managed to carry out judgments and death penalties with the tacit approval of the Roman authorities. This account suggests the emergence, by the middle 240's (i.e., when Origen himself was living in Palestine, if Origen's claim to have personal knowledge of such events be taken

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42 de Lange, 1976, 23-4, questions whether Ioullos the patriarch (Frag. Com. on Psalms, PG 12, 1056) should be identified with the Rabbinic patriarch; and tentatively suggests an Alexandrian provenance for the reference; cf. M. Goodman, "The Roman State and the Jewish Patriarch in the Third Century," in Levine, ed., 1992, 132, "an apparently local sage in Caesarea." See further, de Lange, 1976, 23-8, 33-4, for references to "those called sages." One particular passage deserves mentioning: the reference to "a learned Hebrew styled by them the son of a sage, brought up to succeed his father" (Ep. ad Afric. 7, PG 9, 61-3), suggesting an institutionalized hereditary transmission of the status of sage, which, if this sage is a Rabbi, sheds light on the institutional development of the movement. See G. Alon, "The Sons of Sages" [Hebrew], 1976, 2, 58–73 = idem, 1977, 436–57.

43 Origen, Ep. ad Afric. 14 (PG 11, 81–4). See M. Goodman, State and Society in Roman Galilee (Oxford Centre for Postgraduate Hebrew Studies: Totowa: Rowman and Allanheld, 1983), 115–6; idem, 1992, 128–9, 132. In this passage Origen writes that the ethnarch is like a king; elsewhere, he is at pains to object to a similar claim made by Jews that the scepter has not left Judah, and that the ethnarch is the Jewish king (De principiis 4.1.3, GCS 5, 297).

44 The chronology of Origen's life is a subject of dispute, but the letter to Africanus seems to be datable to approximately 243 or 244 (R. P. C. Hanson, Origen's Doctrine of Tradition [London: SPCK, 1954], 15; cf. H. Crouzel, Origen, tr. A. S. Worrall [San Francisco: Harper and Row, 1989], 231: before 244; cf. P. Nautin, Origène: sa vie et son oeuvre [Paris, 1977], 182, shortly before the persecution of 249–250), and Origen had been in Caesarea since at least 238 (so, Hanson, 1954, 4; Crouzel, 1989, 2–3, puts this in 233; Nautin, 1977, 431–2, in 234–5).
seriously⁴⁴), of the Patriarch as a powerful local figure on the Palestinian political scene. It goes beyond the evidence, however, to argue that in this period the Patriarch was the local ruler of the Jews appointed or officially recognized by Rome.⁴⁵

As a result, while it seems likely that by the early third century (specifically, in the writings of Origen), Rabbis (and particularly their primary patron, the Ethnarch or Patriarch) had become prominent in Palestinian society, it is difficult to trace their history or to gauge their religious or political authority. Indeed, with the exception of Origen, Rabbis are almost invisible. On the basis of Rabbinic texts (problematic though they may be) it is possible to argue that Rabbis in the late second and early third centuries were relatively wealthy and that the locus of their activities (e.g., preaching, judging, teaching) and institutions was increasingly the cities of Palestine.⁴⁶ It also appears likely that throughout late antiquity Rabbinic authority continued to be unofficial and limited to adherents whose number and social distribution we are in no position to estimate. Rabbinic texts polemicize against other, non-Rabbinic judges ("those who are appointed for money") who have been plausibly identified with the official civic judges of the Galilean cities.⁴⁷ Rabbinic narratives about cases judged by Rabbis may similarly be taken regularly as cases of arbitration by a holy (or otherwise significant) man.⁴⁸

On balance, then, there is very little positive evidence that Rabbis served as the governing body of Roman Palestine, or even the class which provided the staff for that government. Such evidence as we do have actually suggests the opposite: that Rabbis at the time of the redaction of the Mishnah (and later) may have been a prominent wealthy group with claims to special authority, but they had little institutional authority and no official standing. In this respect, they may have been like other (frequently religious) figures in the ancient Greco-Roman world who served as judges, miracle workers and

⁴⁴ Goodman, 1992, 131-4; cf. Levine, 1979, who although he does not necessarily regard the Patriarch as the creation of Rome (p. 679), still sees the Patriarch as "the undisputed representative" of the Jews to the Romans (p. 658).


⁴⁶ See Lapin, Text, Money and Law, Chapter III.B.2, and Appendix III. This was the subject of a paper presented by me at the 1994 annual meeting of the Association for Jewish Studies; I hope to return to this topic in the near future.
The Social Study of the Mishnah

arbiters of public opinion. Nor does it seem likely that Rabbinic law as such (for our purposes we may focus on the Mishnah) served as the legal code of the Jewish population of Roman Palestine.

B. Methodology

The preceding survey of the evidence for the political history of Palestine and for the place of Rabbis in it has important implications for the historiography of Roman-period Palestine. Palestinian Rabbinic texts are the richest source for the cultural and social history of Roman Palestine (especially Galilee). From the perspective of ethnic and provincial history in the Roman empire, this literature is of particular importance because it constitutes a cluster of expressions of a non-Greek- or Latin-speaking culture that is highly interested in the boundaries between "Israel" and "the gentiles." Moreover, from the point of view of the history of Judaism, the emergence and the rise to prominence of this movement were epoch-making: the Rabbinic movement and its literature came, ultimately, to define the religious, cultural and intellectual history of nearly all Jewish communities. Yet, as has already been suggested, it is difficult if not impossible to use Rabbinic sources to construct a narrative history in the conventional sense either of Roman Palestine or of Rabbis. In addition, Rabbinic legal texts cannot be taken in any simple way to describe what people did. The argument of this study of *m. Baba' Meși'a* is therefore that in order to understand Rabbinic texts in the context of their social and historical background in a way that elucidates that context, and that does not merely presuppose the "givenness" of that background, it is crucial to come to terms with those texts as literature. That is to say, first, that the Mishnah, like other Rabbinic texts, is a literary artifact (and, moreover, one that was not simply authored, but was redacted out of other material, at least in part) and it is essential to try to understand the mechanics of how and by whom it was produced, and how it works as a piece of literature. Second, the statements that the tractate makes about the world (for our purposes, particularly about such matters as property and contracts) are embedded in a "poetics" that constructs relationships

49 For a later period see the classic essay by P. Brown, "The Rise and Function of the Holy Man in Late Antiquity," in *Society and the Holy in Late Antiquity* (Berkeley: University of California, 1982), 103–52. More roughly contemporaneous with our period is Plotinus. See, e.g., Porphyry, *Life of Plotinus* 9, in which the philosopher is said to have acted as arbitrator and as guardian for children; 10, the imperviousness of Plotinus to magic; 11, his ability to discover thieves and to predict the future.
between people in a particular way. This means that part of the historical investigation of *m. Baba* Mesia involves exploring the elusive boundaries between the real world in which Rabbis lived and the constructed one of the Mishnah. It is in these ways that the Mishnah is a "historical" document. The following sections discuss these matters more fully in light of modern study of the Mishnah.

1. The Mishnah as a literary artifact.

The modern study of Rabbinic literature and society, including the Mishnah, has a long history, and one that cannot be surveyed here. In the first place, the undertaking is vast and deserves (and has produced) study in its own right in the context of the intellectual history of modern Europe. The western academic "invention" of ancient Judaism is closely tied to the political and intellectual forces that shaped the "invention" of such other academic fields as "orientalism," and was frequently carried out by the same people. The same forces informed the parallel construction of Jewish history by Jews for internal Jewish consumption as well as for apologetic purposes. In addition, the publication in recent decades of major study tools addressing this history make a detailed bibliographical review redundant. However, to the extent that these very works are the product of ongoing, overlapping debates that have shaped the critical agenda of the study of

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50 Cf. the rather different view taken in the introductory section of Z. Safrai, 1994.
52 The intellectual background is discussed in J. M. Harris, *Nachman Krochmal: Guiding the Perplexed of the Modern Age* (New York: NYU, 1991), 210–34 and was developed more fully in a paper given at the Columbia University Seminar on Israel and Jewish Studies (1990), which I have not seen in print.
ancient Judaism as a field, a discussion of some of the critical issues raised by these debates is essential.

To be sure, scholarship that challenged the world view of the Rabbinic sources and its latter-day guardians is not a new phenomenon. Nineteenth-century (and later) Christian scholars tended to be interested in *Spätjudentum* ("late Judaism") only to the extent that it helped explicate Christian origins, and tended to treat it as a rather static, stultifying system of "works-righteousness" which the liberating Christ-event and Paul's (or Luther's) doctrines of faith, grace, and salvation came to undo. Jewish scholars, such as I. M. Jost or A. Geiger, might have been prepared to doubt the veracity or historicity of Rabbinic sources, the nobility of Rabbinic intentions, the authority of Rabbis as a religious elite, or the value of Rabbinic piety, in part as a critique of contemporaneous Jewish institutions. In retrospect, however, neither became pivotal figures in framing the critical historical study of Judaism by Jews (although in the case of Geiger such a role would have been well deserved). Instead, it was the more conservative representatives of the *Wissenschaft des Judentums* school such as L. Zunz, Z. Frankel and H. Graetz who came to define the study of Judaism.

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54 See, e.g., the massive commentary, H. Strack, P. Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrasch* (Munich, 1922–8), which still frequently serves as the sole repository of Rabbinic knowledge for students of the New Testament.


What does characterize recent research, however, is an increase in methodological studies exploring and rethinking the compositional and redactional strategies that produced the Rabbinic texts, and, by extension, the historical circumstances in which the texts emerged and were propagated. Through a series of brilliant, but hotly contested, studies addressing literary questions, openly borrowing from New Testament form and redactional criticism, and appealing to anthropological (generally structuralist and symbolist) models, Jacob Neusner has sparked an important and frequently acrimonious debate on method. By challenging assumptions about the history of the traditions behind Rabbinic texts, religious motivations behind their production, the historicity of anecdotal and narrative traditions, and the normativity and authority of legal materials, Neusner has also been a focal figure, although certainly neither the first nor the only one, in subverting the enterprise of the historical reconstruction of Rabbis and Palestinian society on the basis of literary evidence.


60 See, for instance, the transition between J. Neusner, A Life of R. Yohanan b. Zakkai (SPB 6: Leiden: Brill, 1962) and idem, 1977, which reworks much the same material, but now traces The Development of a Legend, and is no longer a biography. Neusner, Judaism: The Evidence of the Mishnah (Chicago Studies in the History of Judaism: Chicago: Chicago, 1981), 5–14, describes Neusner’s rejection of the characterization of Rabbinic Judaism as “normative” (the term is that of G. F. Moore, Judaism in the First Centuries of the Christian Era...
Critical to Neusner’s view of Rabbinic texts is his treatment of each Rabbinic work as a separate document, each with its own “argument.” By focusing attention on whole works, this approach provides benchmarks for the emergence of certain topics, kinds of material, and strategies of organization, and therefore serves as an important corrective to a conception of these texts as containing more or less independent crystallizations of “traditions,” any of which might be early or late. However, this treatment of the material, and in particular his identification of the Mishnah’s argument as “philosophical,” raises serious problems. First, what is most important about the Mishnah, for Neusner, is its interest in hierarchical organization of the world and in such problems as the nature of mixtures that, according to his view, it shares with Aristotelian and late antique Stoic philosophical tradition. In making this claim, however, Neusner subordinates to the document as a whole all of its individual contents which are articulated “in an odd idiom” through a discussion of “pots and pans,” “matters of no consequence,” and “nothing very much.” Thus, Neusner’s Mishnah is not about that which it appears to talk about. What Neusner has not accounted for is why what he acknowledges precisely as commonplaces of late antique speculation should be transmitted in the form of esoteric knowledge, accessible only to cognoscenti, and so deeply submerged in the structure of the Mishnah that it had never been noticed. Moreover, in utilizing terms such as “essay”
in characterizing the arrangement of his philosophical Mishnah and its text, Neusner is drawing an analogy between specialized forms of discourse that are not precisely comparable: the Mishnah is not "prose" in the usual sense of the term, much less a literary construction whose rhetorical success is measured by its ability to lay out an argument and thereby to persuade, but rather is terse and formulaic to the point of near obscurity; the argument is encoded and must be teased out. Nor has Neusner asked who else besides "philosophers" might be interested in exploring the material implications of deeply held and intersecting principles about the nature of the world (e.g., "lawyers"). Second, the Mishnah frequently can be shown to utilize different sources—a fact that, ironically, Neusner's own work substantiates, but from which he fails to draw important conclusions. As a result, despite the overall coherence and unity of the Mishnah, the Mishnah's "argument" is frequently fragmented and occasionally contradictory. Thus, Neusner's treatment of the Mishnah fails to account for the philosophical and literary

is the fact that the "philosophical" agenda of Neusner's Mishnah is entirely "exoteric": the hierarchical organization of earthly phenomena through lists (what Neusner terms "Listenwissenschaft"), and the problem of the dissolution of primary elements into mixtures and the possibility of their later separation. Almost entirely absent in the Mishnah is any sense that "Torah" is truly esoteric (except to state that certain portions of Scripture should not be publicly read or translated, or generally expounded, e.g., m. Meg. 4:10; m. Hag. 2:1) or any discussion of those topics such as the nature of the divine, the glory of God or the makeup and hierarchy of the divine household which were, in different ways, the core of certain kinds of Platonic, "gnostic" and later Jewish esoteric traditions. Arguably, the very idiom of the Mishnah betrays not the overriding interest in mixtures and hierarchy of a philosopher, but the virtuosity and ingenuity of the technical specialist in a legal discourse who can use a handful of "principles" to generate a multitude of cases, ever refining, qualifying, and making more explicit their application.

64 E.g., Neusner, 1988, 74.


66 See further Chapter II. Here it is necessary to point out that when Neusner denies that the traces of original "sources" can be recovered, he seems to refer to the actual traditions formulated by Rabbis to whom material is attributed. See, for instance, J. Neusner, A History of the Mishnaic Law of Purtities: Part XXI, The Redaction and Formulation of the Order of Purtities in Mishnah and Tosepta (SJLA 6: Leiden: Brill, 1977), 316. On the other hand, Neusner is willing to acknowledge not only that material attributed to earlier sages seems to fit different formal characteristics from those that characterize traditions attributed to later Rabbis (1977, 167), but even that tractates were formed out of "already-formed aggregates of cognitive units," whose pre-existence, and occasional dissolution at the hands of the final redactors, Neusner attempts to show (1977, 113–63, explicitly, 124, 158). Thus, Neusner's redactional model (arguably ancient traditions, but actual materials of relatively recent date handled conservatively) is in some respects quite similar to that of Albeck, Mabot, 99ff.
implications of an authorial voice that speaks through the words of others. Third, Neusner's emphasis on whole documents as the only framework in which we can identify the meaning of a tradition (until we find it in a later document in which case it has a new, but equally unique, meaning) naively ignores the problem of the indeterminacy and multiplicity of meaning, especially when "true" meaning is hidden deep below the surface. Finally, the emphasis on the document as a unity despite traces of a complex redactional process ignores the social matrix—who produced these texts, how they circulated, how the redaction was carried out—in which the text itself was produced.

These questions inform the conception and organization of Chapter II, which bears a distinct methodological debt to the procedure that Neusner worked out in his *History of Mishnaic Law* series. On the assumption that different tractates may have different histories that may be obscured if analysis centers on specific topics, or on pericopae reflecting certain stylistic or redactional traits, this study centers on one tractate: *m. Baba' Mesi'âa*. Secondly, I attempt to deal seriously with the Mishnah as a literary artifact of late second- and early third-century Roman Galilee. What is important is not only the broad programmatic purpose of the Mishnah (as a cleverly disguised philosophical discourse, or, as others would have it, a law code, or an authorized compendium of legal materials), but also what the Mishnah betrays about its own composition. This attention to redaction, too, follows Neusner's earlier procedure, but is entirely ignored in his work on the order of *Nêzîqîn* (Damages) in which *Baba' Mesi'âa* appears.

As a result, Chapter II emphasizes the complexity of the Mishnah as a text. In this respect I have been following important contributions to the study of the Mishnah by David Weiss Halivni (building, in turn, on important studies by J. N. Epstein), who has repeatedly identified the complex redactional seams in various Mishnah pericopae. This approach draws critical attention

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67 E.g., Neusner, 1988, 24.


71 See Epstein, *Nusah* and *Sîprüț*, passim. Regrettably, Halivni has not devoted a book-length study to the problem of the Mishnah. Brief analyses may be found in his *Mêqôrôt ú-
to the way in which material has been utilized in the Mishnah. More importantly, it opens the question of the social or ideological background that is reflected by the existence of a multivocal tradition preceding the Mishnah, and of the only partial suppression of that multivocality in the redaction of the Mishnah itself.\(^\text{72}\) By concentrating on a single tractate, I wish to bring sustained inquiry to what has been, on Halivni’s part, a sporadic undertaking. In tracing redactional processes, my approach differs from that of Halivni primarily in that I tend to emphasize the fluidity and instability of highly stylized transmitted material where Halivni is inclined to see the codification and occasional alteration of authoritative and highly fixed formulations. Thus, for instance, I do not treat material attributed to individual sages (e.g., “Rabbi X says” or “[The above were] the words of Rabbi Y”) as the words of these sages.\(^\text{73}\) Rather, these statements are stereotyped formulations, taking the form of more or less tightly controlled rhetorical structures that arise in the context of literary production. What this means is that there is no guarantee that we can accurately reconstruct the legal “policy” of any individual sage.\(^\text{74}\) Instead, attributed statements present what contemporaneous or later tradents thought a particular sage might have ruled in a given case. In addition, this may mean that statements attributed to particular

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\(^\text{72}\) See, e.g., Halivni, 1986, 59–61. However, the Mishnah’s sources seem to me to be too fragmented, and the stylistic commonalities (whether or not they are imposed by redactors) too consistent to show, at least in Baba’ Mezi’a, that identifiable corpora representing specific schools (e.g., “the mishnah of R. Yose”) have been utilized. This is the argument of A. Goldberg, 1958–9, 260–9 and worked out in his commentaries to tractates Sabbath (Commentary to the Mishnah Shabbat [Hebrew] [Jerusalem: JTSA, 1976]) and Erubin (The Mishnah Treatise Erusin [Hebrew] [Jerusalem: Magnes, 1986]).

\(^\text{73}\) This is an insight stressed by Neusner (see, e.g., Neusner, 1981, 17–20). However, I argue against his use of attributed statements as benchmarks for historical development in the final section of Chapter II.

sages are subject to freer interpretation and manipulation than Halivni sometimes presupposes.75

2. The Mishnah as a historical document.

Where this study clearly breaks with the approach laid out by Neusner is in the attempt to deal seriously with the Mishnah as a document shaped by and reflective of a history. That the Mishnah is in some way a response to the destruction of the Jerusalem Temple (70 CE) or the failure of the Bar Kokhba revolt (ca. 132–5) is something of a commonplace. But whereas most proponents of this view treat Rabbinic tradition as generally quite old, and therefore point to “practical” considerations (for instance, to insure that “the tradition” not be forgotten, or to repair losses that arose due to the destructions76), Neusner, who denies the existence or relevance of any “tradition” in the Mishnah, makes response to catastrophe the very point of the Mishnah’s production. That is, the Mishnah addresses a shattered world with a utopian fantasy of its own creation, in which the Temple still stands, and all society is still properly ordered.77 What Neusner does not do is locate the production of the Mishnah within the dynamics of a real society. To be sure, he analyzes the interests of the Mishnah into those of priests, scribes, and householders.78 However, his failure to link this coalition of interests to what we might possibly know about the priests, scribes, and householders within the social world of Roman Galilee makes it impossible to evaluate the

75 Halivni, 1989, 63–70, 69–84, himself makes this argument in connection m. Šab.2:1–2 and m. Ker.3:1; see also his reference to assertions in Mēqōrōt ú-mēšōrōt (in n. 76) about the redactor’s hand in manipulating attributed material. In Halivni, 1979, 194–5, Halivni showed the way in which apparently synonymous formulations could replace one another in the transmission of traditions, but still formulated the problem in terms of what R. Gamaliel “originally said” rather than in terms of the transmission history of the tradition.

76 N. Krochmal, Mōreh nēbūkē ha-zēman, ed. L. Zunz (Lemberg, 1851), 212–7; I. H. Weis, 1871, 2, 41–2; Albeck, Mābō; 82; Halivni, 1986, 58, for example, all attribute early collections of Tannaitic material to the prevention of loss due to political or religious crises. Such interpretations for the codification and transmission of material are not modern inventions. They begin already with t. Šab. 1:1: “When the sages entered the vineyard at Yabneh they said: “The time is coming when a person will seek a word from the words of Torah and not find it, from the words of the sages and not find it ... for no one word of Torah is like its fellow. Let us begin with Hillel and Shammai.”” The scriptural exegesis of Amos 8:11–2 that is incorporated here suggests that it is not merely the multiplicity and variety of Torah that is at issue, but also a universal upheaval that has created this deplorable decentralization of Torah.


magnitude of the utopian world of the Mishnah. Neusner assumes, without substantiation, that the suppression of the Bar Kokhba revolt was perceived as the cataclysmic destruction of a messianic hope. Yet the messianic claims of the revolt have been questioned, and any connection between Rab­bis as a group and the revolt is open to doubt. It is more difficult to question the apparently enormous demographic, and therefore cultural and political, consequences of the revolt (see the brief discussion above, section A.2). This means that even if Neusner is correct in seeing the Mishnah as the response to the revolt and its suppression, it is a response to the revolt as a

79 In connection with priests and scribes Neusner makes a number of unsubstantiated assumptions. While it may be that priests were particularly interested in preserving (or creating) traditions about the temple, there is no necessary reason to believe that all priests were concerned with personal purity, and that therefore the tractates concerned with ritual purity are the “gift of the priests” (see the table in Neusner, 1981, 240), especially since, as Neusner himself argues, the origins of this material may well be among a lay group insisting on ritual purity (pp. 69–71, 225–9; see also idem, Rabbinic Traditions About the Pharisees Before 70 [Leiden: Brill, 1971], 304–5). So, when Neusner states that “the Mishnah ... speaks for the program of topics important to the priests. It takes up the persona of the scribes, speaking through their voice and in their manner” (Neusner, 1981, 233), we may ask whether those very “priests” are not priests at all but instead those people whom Neusner calls “scribes” who have a “pseudo-priestly” agenda. On the other hand, to ascribe to scribes, and not to priests, an interest in the running of courts is to ignore the political and governmental power of priests in Judea up to the revolt in 66 CE, the last period before the Mishnah in which the political actors can be identified with some ease, and also to forget that priests were never a monolithic body. Neusner might be correct that the Mishnah reflects “priestly” concerns, but he has failed to tell us which priests he means; at any rate “the priests” is almost an empty signifier.

In outlining the interests and concerns of “scribes” (who, according to Neusner, later become “Rabbis”) Neusner assumes that the scribes linked with Pharisees in the New Testament (e.g., Mt 23:2) and referred to obliquely in the Mishnah are equivalent to a professional guild of document and list writers (Neusner, 1981, 233), whose contribution to the Mishnah are tractates concerned with documents and courts. Yet Neusner offers no evidence that this should be so. That professional Jewish scribes existed we have no reason to doubt (see P. Babatha I; and M5:11). What needs further clarification is that these scribes (a) formed a guild that (b) shared specific religious and political theories.

80 E.g., Neusner, 1981, 40–1.

symbol whose meaning was constructed and had been perpetuated for decades before the Mishnah as a whole was completed, by people who lived under specific (and shifting) social and political conditions. It is this context that needs elucidation if we are to understand the particular "argument" of the Mishnah. This is not a positivist historical critique of Neusner's non-positivist text-as-system analysis: it is a critique of his use of simplistic historical assumptions and argumentation under the guise of speaking only of known facts.

The present study attempts to root the Mishnah's civil law in smaller-scale interactions in the agrarian world of Roman Galilee. Thus, the primary focus is not "law" as a coherent system of discourse but rather how individuals deeply interested in legal questions construct and respond to the environment in which they live through their exposition of legal materials. In framing the study in this way, as I have already pointed out, I am not denying the fictional character of the Mishnah in general or Baba Metsîa' in particular. The goal of the present study is rather to explore the horizons of this fictional world. We should like to be able to identify those areas in which

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83 Compare the programmatic statement by J. Neusner, *The Economics of the Mishnah* (*Chicago Studies in the History of Judaism*: Chicago: University of Chicago, 1990), 13: "Nor do the Mishnah's authors tell us anything at all about the economy of the Jews in the time of the Mishnah or even reveal economic attitudes that demand attention." Although I agree with Neusner on many issues, such as the utopian character of the Mishnah, and, most pointedly, the insistence of the Mishnah, at least in *m. B. Mes.*, on addressing only a rather narrow set of economic topics, shaped by the concerns of a landowning class (cf. Neusner, 1990, 50–71), the preceding quotation underscores the fundamental difference of the approach taken here. I take it as my starting point that any description of an economic system, however utopian, is fundamentally influenced by the economic notions of its authors, and indeed reflects upon the social and economic world of these authors.

For the present, I leave aside what I think are fundamental misreadings of texts (e.g., M4:1 does not cast every sale as a form of barter, but rather sharpens the distinction between money and merchandise; nor does the rest of the chapter presuppose that "price" is a constant corresponding to a "value" that is taken to be inherent). I wish to point out, however, that in order to understand the "systemic" and ideological character of the Mishnah's economics, it is necessary to be as clear as one can about the range of what people may actually have been doing. This Neusner simply refuses to do, preferring, instead, to compare the Mishnah's rules to Aristotle (pp. 32–49), rejecting any comparison with Roman law (pp. 42–3), much less
Rabbis simply mirror the leading ideological assumptions about the nature of economic interactions because they accept them as commonplace and true, and where the authors of the Mishnah actively construct an argument that circumscribes economics within a consciously held and articulated theological, legal or other ideological framework. In marking out these areas, the comparability of the Mishnah’s exposition of contracts and obligations in tractate Baba’ Meṣi’a to other evidence from the Roman world (notably, but not exclusively, roughly contemporaneous Roman juristic writings, and more importantly the actual documentation of transactions from Judea, Syria, and, above all, Egypt) provides the background and some of the conceptual boundaries that can help identify where the Mishnah reflects, distorts, or simply ignores the realities of the world in which the Rabbis who produced it lived. Similarly, attention to implicit differences in power in the way relationships are described, even where actors are nominally free (e.g., when a borrower is free to act with the property on loan, and when the borrower’s activity is controlled by the lender) and to topics that do not receive attention in connection with civil law but which may arise in other contexts (e.g., traditional long-term tenant farming) may elucidate the range of assumptions. Although the present study is of necessity incomplete, Chapter III is meant to set the parameters for such an inquiry through my analysis of Baba’ Meṣi’a.

If, in Chapter III, I have managed to outline the leading economic and social concepts of the Mishnaic civil law, it has been in part by perpetuating the Mishnah’s own fiction: the world of wealthy owners of land. Some ideas

documentary evidence, and, to my mind, misunderstanding Finley (pp. 47–8), who offers, in many ways, a depiction of the very economic notions of the Mishnah as the common assumptions of the landed elite in the ancient world (M. I. Finley, The Ancient Economy, 2 ed. [Sather Memorial Lectures 43: Berkeley: University of California, 1985]). After the statement cited above, Neusner does go on, for instance, to describe the Mishnah’s notion of markets and occasionally compares it with what he assumes was the “real” economic world in which the Mishnah was produced. However, Neusner makes no effort to ground these assumptions in any assessment of the evidence for what people may really have been doing. Hence, when he states that the Mishnah has little regard for the importance of the commercial sector of society (e.g., Neusner, 1990, 69, 90–1, 122), he presupposes their “real” importance, without asking to what extent and in what ways commerce functioned at all in the ancient world. Thus he over-emphasizes the play of the “free market” in the world outside the mental one of the Mishnah, surely an anachronism in any discussion of economic ideas in antiquity (see, e.g., p. 82). Similarly, in his discussion of the Mishnah’s refusal to take money as an abstract (Neusner, 1990, 80–1, citing M4:1–2), Neusner ignores the fact that in the ancient world money was not merely a system of signs, but also based on the circulation of pieces of metal which, in turn, had fluctuating value in the marketplace which might, and indeed in the late second and third centuries did, undermine the system as a whole.
were likely to fall into the category of the self-evident: that primary actors are free male adults; that wealth comes primarily in the form of land; that marketers and bankers, far from making the economy "work," provide a service to landowners; that to charge interest is to take advantage of need. Others are far less obvious. Given the drastic changes in Palestinian society, and in the political relationship between Palestinian Jewry and Rome, between approximately 50 and 200 CE, just how to define "Israel" as a concept and as a social group, and its proper constitution and leadership, were hardly self-evident. Yet, piety, learning, and the temple, together with the proper management of economic interactions, had become saturated symbols with which Rabbis could articulate a new notion of "Israel," its internal organization, and its relationship with "the gentiles." By working out a detailed program of everyday interactions *m. Baba* Mesiat reflects a renewed interest in civil law as an aspect of Torah after centuries during which questions of civil law seem to have received no more than sporadic treatment. However, the concerns that they reflected in this articulation to and for all of Israel were consistently those of the wealthy landholder. On the evidence of the Mishnah it is impossible to define or quantify this apparent anomaly. We are unable to measure the extent to which Rabbis themselves were members of the landed elites, or to which the wealthy landowners of Roman Galilee formed a monolithic group whose responses to Rabbis, and to Rome, were likely to be essentially the same. Arguably, the Mishnah might have been targeted at those landowners who were not sufficiently wealthy to be absorbed directly into the Roman establishment, but this is a hypothesis that is probably beyond the evidence of Rabbinic literature and certainly that of the Mishnah itself. Similarly, the Mishnah does not provide information about how far down the social and economic spectrum Rabbinic notions, much less authority and influence, were likely to go. Did the attention to "Israel" really grant only one group in society a true claim to that title, or might Rabbis have taken their rhetorical inclusiveness quite seriously?

3. The limitations of this study, and areas for future research.

The remainder of this study focuses on *m. Baba* Mesiat almost exclusively. What is still lacking, therefore, in the approach to the Mishnah just outlined, is a way of describing its composition, composers, the means of its formulation and propagation, and its potential audience within the complex web of social relationships that was the world of Roman Galilee. For if it is correct to assume that the composers of the Mishnah have not merely restated that which is "traditional," but have instead staked a claim to the

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control and interpretation of everyday assumptions by means of traditions of lesser or greater antiquity, we should like to understand this self-consciously traditional discourse against the background of wider (but for us largely unrepresented) discussions about the everyday and the contents of "tradition." What is at stake is not merely the history of ideas, but the way in which power and authority are taken up through the appropriation and manipulation of ideas, traditions, and symbols in the form of such institutions as courts, schools, and houses of worship.

I am suggesting, in short, that in order to understand the Mishnah we must be willing to attempt to ask about the world outside of its mental and descriptive boundaries. This will require attention to a growing body of studies (primarily, but not exclusively, produced by scholars working in Israel) that integrate literary evidence (Rabbinic, classical, and patristic) with a growing body of archeological, epigraphic, and papyrological material—much of it only discovered or published in the last decades—into a picture of Palestinian society.85 In particular, recent study relating to Galilee, the area in which the Mishnah was produced, and in which the Rabbinic movement first rose to prominence, has produced several syntheses86 and an "International Conference on Galilean Studies in Late Antiquity" under the auspices of a "Center for the Study of the Galilee."87 In addition, more specialized studies have attempted to assess village layout, regional and market organization, cultural influence, and the emergence of a Rabbinic elite in late


87 The papers of this conference have been published as *The Galilee in Late Antiquity* (Levine, 1992), cited above.
antique Galilee. Among other sites, Sepphoris (one of the two Galilean cities in the Roman period) has been excavated repeatedly since 1983 and has rewarded excavators with truly stunning mosaics that have contributed to current understanding of the acculturation of the city (or of its urban elites) to Greco-Roman norms. For historians working now, the new resources available for the regional study of Galilee offer opportunities for a new synthesis of both early Rabbinic history and Roman-period Palestinian history. With this, however, we have moved well beyond the limits of this study.

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The format and presentation of the present essay have been structured around the canons of the academic study of ancient Jewish history and Rabbinic literature, which are committed to the analysis of Jewish communities and literature sui generis. However, this project overlaps with several different sets of concerns which have shaped my thinking about the problem, and which I wish to mention briefly, because they merit further study. Rabbis emerged in the late second or early third century as champions of a “discursive practice”: a specialized way of speaking about certain topics (discourse) that is closely tied to the appropriation or manipulation of power on the level of government, institution, and, through a specialized way of controlling behavior, the body itself. Rabbinic texts therefore offer an opportunity to


90 See, e.g., M. Foucault, The Archaeology of Knowledge, tr. A. M. Sheridan Smith (New York: Pantheon, 1972); idem, Discipline and Punish, tr. A. Sheridan (New York: Vintage, 1979). What is interesting in Foucault’s treatment of “discursive formations” is his acknowledgment of political or social effects (indeed these formations are transformative) without tak-
examine the construction of knowledge and its implication in the relations of power. Moreover, Palestinian Judaism itself did not develop in a cultural or political vacuum: Rabbis are an articulate group within a subject people in a province of the Roman empire. As such, Rabbinic literature offers a window into the nature of Roman hegemony from the perspective of non-Romans. The persistence of a non-Greek and non-Latin vernacular as a religious and literary language, and its implications for the politics of religious difference, should be compared with the emergence or persistence of, for example, Syriac, Coptic, and Armenian literatures. This may, in turn, help to better understand the limits and contours of “hellenization” in the eastern Roman empire. I would also suggest that modern anthropological debates on the construction of ethnicity among “colonized” populations through a dialectical process of resistance, appropriation and acculturation offer further material for comparison and a theoretical framework for the study of later Roman Palestine. What such a broadening of perspective may provide is a sense of that which the various forms of Judaism in antiquity share with human communities everywhere. Such an approach does not only “de-center” the history of Judaism, but may also highlight that which is unique in Jewish civilizations as well.

91 Since the summer of 1994 (after much of the preceding chapter was written), I have also begun to consider the relationship of my project as it is envisioned here to the so-called “New Historicism” (or “Cultural Poetics”). While I acknowledge a great deal of overlap in interests (and biases), it seems to me that the New Historicism remains a practice of literary criticism and that its goal is still more or less subversive readings of “Literature.” The exercise undertaken here remains, I believe, resolutely historical: it is the elucidation of a real world outside of the Mishnah that is the aim (however unattainable) of this study, and without which the entire undertaking is pointless.
