Chapter IV

Conclusions: Rabbinic Civil Law
and the Social History of Roman Galilee

A reader who expected a detailed description of the social history of Roman Galilee will have been disappointed by this volume. This study of *m. Baba* Mesi' a has been unable to provide a map of the distribution of wealth, power, and authority in Roman Palestine. Ultimately the product of a religious elite, and reflecting the concerns of propertied householders, the tractate reveals the world of subalterns in only the most limited way. The reasons for these negative conclusions have been discussed in Chapter I. The Mishnah, and Rabbinic law more generally, do not simply describe the way in which Palestinian (or other) Jews lived their economic lives. The stories in *m. Baba* Mesi' a (and elsewhere) in which Rabbinic luminaries carry out these laws certainly suggest that in at least some strata within the Mishnah these laws were expected to be practicable. In addition, the similarities between the Rabbinic conceptions of how particular kinds of contracts were to be constructed and their counterparts in non-Rabbinic and non-Jewish sources suggest that a substantial portion of Rabbinic civil law does mirror social practice. Nevertheless, Rabbis do not appear to have had institutional authority in Galilee beyond their own adherents in the second or third centuries. Moreover, the legal program that the Mishnah outlines is ultimately an ideal one, in which the Temple still stands and in which high priest and king still function. Thus it is never clear to what extent people who might have followed rules corresponding to those of the Mishnah will have done so because Rabbis or their tradition require it.

The literary and redactional problems discussed in Chapter II have compounded the historiographical problem. In that chapter, I attempted to demonstrate the use of sources in the composition of *m. Baba* Mesi' a; their supplementation and revision; and, occasionally, the existence of outright contradictions. As a result of its complicated redactional history, we should not imagine that the Mishnah in general, or *m. Baba* Mesi' a in particular, constitutes a sort of “handbook” for landholders who wish to proceed according to God’s law. There are too many gaps for the tractate to be used
in this manner, such as the definition of a short-weight coin in M4:5 which leaves the matter in dispute (and which may in any case disagree with other pericopae), or the absence of a consistent definition of culpable negligence in the case of a depositary. If the tractate constitutes a “code” at all it is one that presupposes knowledge of principles left unstated (although these might be more self-explanatory to a contemporaneous non-specialist than to a present-day student) and of rules to resolve contradictions or matters left in dispute.¹

Instead, the tractate is better seen as the product of the Rabbinic community for its own specialist audience. Moreover, I have suggested (at the end of Chapter II) that the complex redaction of the tractate may reflect on a literary level a transition from an acephalous network of disciple circles to a centralized movement with authorized tradition. Thus, although the Mishnah may not “document” the social and economic life of Jews in Roman Palestine, it does indeed offer us an opportunity to examine how an articulate group of Jews within Palestinian society chose to depict that social and economic life. Some of the outlines of this depiction are elucidated in Chapter III.

As a collection of materials pertaining to civil law, the interests and problems that m. Babba² Mesî’a² addresses most consistently are those of the landholding town dwellers. It is they, for instance, who had the greatest access to and need for coin, who marketed their goods through specialists (through large-scale sale or through agency), who were consumers of produce bought in the marketplace, who owned enough land to exploit it through tenancy or through hired labor, and who had large enough stores of produce to lend. At the very least, this suggests that to the extent that Rabbis wanted to be known as a group with an ancient and authoritative tradition about civil law, it is wealthy property owners to whom they wished to make this claim. Whether Rabbis as a group were themselves wealthy is beyond the evidence of the Mishnah itself. That a Rabbi might be a landowner is presupposed in M5:8 and M7:1, as well as in other material.² In addition, later Rabbinic sources, themselves the products of urban Rabbis and therefore perhaps disproportionately over-representing the traditions of the cities, nevertheless place Palestinian Rabbis predominantly in the cities of Palestine: Lydda,

¹ To be sure, later Rabbinic tradition had a set of rules that served exactly this purpose (see the brief discussion above, Chapter II.D.2). The question that remains is whether or not these are the product of later exegetical development (compare the development of the “law of citations” in later Roman law; see the brief discussion in H. J. Wolff, Roman Law: An Historical Introduction [Norman: University of Oklahoma, 1951], 159–61; and the Codex Theodosianus 1.4.1, 2, 3). That such rules formed a basis of the redactional strategy for the Mishnah is the view of D. W. Halivni, “Misnôt še-zâza mi-mêgûmân,” Sidra 5 (1989), 86–8.

² See above, Chapter III.C., n. 252.
Caesarea, and especially Sepphoris and Tiberias. If this is correct, Mishnaic civil law does not only address the concerns of a provincial landed class, but is in fact the work of an urbanized, wealthy religious movement.

At the same time, in working out their rules and in presenting this claim, the framers of *m. Baba* Ḥeṭa*‘a* seem consistently to have stressed ethnic ties that link the collectivity of all of Israel across class or regional lines, rather than such categories as birth (e.g., priestly status) or civic affiliation that linked the upper classes at once to particular towns and to the broader aristocracy of the Roman empire. This stress on what is ostensibly an “egalitarian” society can be seen in a number of contexts, such as the general duty to care for lost objects (although an aspect of personal prestige is introduced in M2:8 [H]), or the assumption that such service, or the care of deposits and the lending of money, should be provided gratuitously. In connection with leases of agricultural land, and possibly the hiring of labor, *m. Baba* Ḥeṭa*‘a* avoids describing truly dependent relationships such as bound tenancy. This aspect of the social agenda of the tractate’s rules is most clear in the case of loans, since it is not only explicitly usurious loans that are prohibited but also those loans in which the borrower provides money or services as “gifts.” Here the laws of usury seem to be constructed to avoid systems of patronage based on wealth and power. At the same time, these same rules regarding usury reflect the inevitability of the differential relationship between lender and borrower (expressed, for instance, in the rules about the treatment of a pledge, and the obligations of a borrower who has borrowed a loan for “investment”).

This tension inherent in the choice to present all Israelites as equal, but at the same time to accept social and economic inequalities between Israelites, is reflected repeatedly in *m. Baba* Ḥeṭa*‘a*, in particular in connection with rules concerning hiring of labor and loans. This acceptance may have been practical and realistic. However, it must be stressed that this was indeed a choice, and the ancient sources themselves suggest that it was not the only one available. For example, Rabbis might have chosen to quantify the entitlements of workers so as to guarantee them a certain standard of living (and perhaps create relations of dependence thereby), in the way that they did for poor people entitled to charity distributions and for wives. Furthermore, there is a long-standing communitarian tradition in ancient Palestinian

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3 See above, Chapter I, n. 46.
Judaism, hints of which can still be found in Rabbinic texts, that might have been utilized by these Rabbis. In choosing to identify themselves with the wealthy Jewish landholders of Roman Galilee, Rabbis were also choosing, among other things, to sanction—and, to the extent that the image of "egalitarianism" is maintained, to mask—a set of unequal relationships between rich and poor.

In presenting this study I have attempted to use the text and concerns of *m. Baba* Mesi'ā as the framework for my analysis. To conclude, I wish briefly to locate the development of *m. Baba* Mesi'ā within a somewhat wider perspective. In the one hundred and fifty years between 50 and 200 CE, Palestinian Judaism had seen major political, social, and religious changes, not least of which were the suppression of two revolts, the destruction of the Jerusalem Temple, the garrisoning of the province with two legions, and increased urbanization. It is in the wake of a period of "pacification" and integration into the Roman empire that the Mishnah emerged, with its imagined world in which the Temple still stood. Mishnaic civil law is not best seen as a codification in the late second century of laws that by that time were of great antiquity. Indeed, both from the literature of the second Temple period and from what Rabbinic texts themselves attribute to their earliest tradents, questions of contract and property appear to have been at best questions of secondary importance or, in the case of the Qumran sect, of sectarian governance. At precisely the time during which the economic practices of Palestinian Jews would have come increasingly under the direction of Roman provincial authorities, *m. Baba* Mesi'ā attempted to invent a "Jewish" civil law in which officials of any government (except for the *angareia*) are essentially absent.

It is in this context that the seemingly paradoxical tension between consistently speaking to and for all of Israel, for whom the sharpest divisions are those between Jew and gentile, or (outside of *m. Baba* Mesi'ā) between pious and impious, and the equally consistent addressing of the concerns of wealthy property owners, takes on particular significance. If my suggestions

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5 See, for instance, the Community Rule (1QS) VI.18–20 (upon completing a probationary year, the property of the examinee is merged with that of the "council of the community"); the Damascus Rule IX presupposes that property is privately held, but even here one can speak of "the property of the camp" (*me'ud ha-mahaneh*), IX.11; see also Josephus's description of the Essenes, *War* 2. 122–4. The description of the Jerusalem community of Christians in Acts 4:32–5:11 surely comes out of this same tradition. Within Tannaitic literature, we can point to *t. Sebi*. 8:1 as an example of court-enforced pooling of resources, at least during the sabbatical year (this communalism is explicitly designated by the passage as something that happened *ba-riyona*, "at first," but is no longer observed).

above with respect to the social origins of Rabbis are correct, the Rabbinic movement was one of wealthy intellectuals attempting to redefine who Israel was, its proper relationship with its God, and how that relationship should manifest itself in nearly every facet of human life, including economic practices. In doing so, the Rabbis who produced *m. Baba' Mesi'a* articulated an egalitarian ethic that incorporated all (male) Jews into “Israel,” without regard to social status. It is important not to romanticize this notion. Rabbinic “egalitarianism” allowed Rabbis to make new social distinctions along the lines of piety and ritual practice. Moreover, *m. Baba' Mesi'a* tacitly embraces, and occasionally authorizes, the structural inequalities of poverty and wealth in its imagined Jewish society. Yet, in cultivating a rhetoric that addressed “Israel” and not the priests, the sons of light, or the honestiores, the Rabbinic movement constituted one voice (and the one that has been best preserved from antiquity) in an ongoing attempt to rearticulate Jewish ethnic identity in a world that had become, for Palestinian Jews, both smaller and more diffuse.