

## PREFACE

Mishnah's fourth division, called Damages, presents a system of civil law and a description of the institutions for the government of society and the enforcement and application of that law. So far as Mishnah "is" a law-code—that is, is to be compared to a standard code of laws—it is in the present division that we should find it. And indeed we do, for the division is remarkably cogent in its two principal components, the Babas for the civil law, and Sanhedrin-Makkot for institutions of civil government. To the former unit, we need add only Abodah Zarah, which regulates relationships between the Israelite community and its larger social context—that is, the people living right next door—and Shebuot and Horayot, which address special problems of court procedure and public policy.

What is truly astonishing in this reasonable cogent construction is that, as we shall see, the whole thing emerges complete in the aftermath of the Bar Kokhba war. The framers of the document only episodically claim to gain access to materials in the names of authorities before Ushan times, but whenever they are able, they systematically, routinely, and repeatedly follow the main lines of Scripture for the discovery of the principles and details of the law. In many ways this division, along with the division of Women, does for the ordinary life of the Israelite nation what the divisions of Holy Things and Appointed Times do for the Israelite Temple and cult. They describe that perfect world already described in Heaven and revealed in the Torah of Moses. In time to come, and in this time as well, out of its ruin Israel must construct such a world. In adhering to the original design of creation, that is, to the plan of the Torah, Israel will come to that seventh day of sanctification which the priestly Creation-myth presents as provoked by the perfection of creation. What has been wiped out in the recent past—the Temple, the government, the social polity of Israel—is what now will be reconstructed along the lines laid out in creation itself. So the issues of the division of Damages are considerable, the outcome crucial.

Let me now specify the problem of this book. It is to answer four questions which study of the tractates of the division of Damages raises in our minds.

First, how do the eight usable tractates (omitted: Abot, Eduyot) fit together to form a complete statement about their assigned topic, and what statement do they make (Part One)?

Second, in what way did the principal conceptions and ideas of the eight tractates take shape (Part Two)?

Third, how shall we relate the history of the laws of the tractates, viewed as a whole, to the history of the period in which the laws of these tractates unfolded (Part Three)?

Finally, what are the place and meaning of Mishnah's system of Damages in the larger world-view expressed by Mishnah as a whole (Part One)?

Behind these four questions is a theory of what is important about the facts we have studied in the first four parts of the present work. In my judgment what is important is the historical unfolding of the laws and the relationship between the inner issues and tensions of the laws, which lead to the formation of a given conception or fact, and the larger setting in which the Mishnah's sages did their work. Behind that judgment of the centrality of history and context in the interpretation of the materials we have studied is yet a further, deeper conviction about the way in which the work of description and interpretation should take place. Stated simply, the governing proposition is that the work of description and interpretation must focus upon a complete system. It is to be defined within a carefully delineated context. That is why we do not speak about civil law and politics in general. We are concerned with the *system* of Damages within Mishnah's larger frame of meaning and order, that is, as a subset of Mishnah's total system, viewed as a whole.

Our purpose, achieved through systemic description and analysis, remains the discovery of the structure and history of Mishnah, down to 200. We seek to locate the correct framework for the interpretation of the Judaism of the two Torahs, Scripture and Mishnah, which has predominated for two thousand years and which continues to constitute the normative version of Judaism. Self-evidently, Mishnah draws upon a sizable antecedent corpus of facts and even of conceptions, materials produced by and shaped within prior kinds of Judaism. But these it makes its own, which is in the very nature of a system. All things are drawn together and reshaped into what Mishnah wants to make of them and made to say what Mishnah wants to express through them. That is why the critical issue of the historical work is the character of Mishnah's system as a whole.

In the opening chapter I explain why I think this division of Mishnah may be deemed to constitute a system and to define a world-view worthy of sustained inquiry. But it is only after each of the principal components of the system has been analyzed as to its chief traits—its issues, themes, and recurrent, generative inquiries—and has been described in its

historical unfolding that the systemic question is fully answered. The important questions are the obvious and simple ones.

The most troublesome question in the study of Mishnah is why Mishnah chooses to deal with the six topics on which it does its work, and not some other set of six topics, or one, or three, or twenty-four topics. In this connection civil law and politics are no more self-evidently important than systems of laws concerning holy meals, priests, Levites, or gentiles, which we do not have, or systems of laws concerning Damages, Women, Holy Things, Appointed Times, Agricultural Taboos, and Purities, which we do. What demands the systematization represented by a system of laws, unfolding through the massive exegetical labor required for the formation of a division, with its tractates and chapters? It is to begin with, a principle of selection, operative throughout the applicable everywhere. Until that principle of selection is clarified, all else remains neither fully explained nor properly interpreted.

I have been especially helped by the availability of a number of definitive accounts of extrinsic problems which I have to confront in this project. I cite at some length writings by Geza Vermes on the institutions and civil laws of Qumran, Schürer-Vermes-Millar (see Abbreviations and Bibliography) on Israelite political institutions before 70, Stephen A. Kaufman on the system of Deuteronomic law and its principle, and Peter A. Brown on the interplay between holy man and the enduring institutions of society and government in late antiquity. I express my thanks to these colleagues for their splendid work, which saved me a great deal of time and trouble, and which, in any event, I could not have done so well as they did. The importance of citing their work in their own words will be self-evident to the reader.

The bibliography, prepared by Mrs. Lee Haas, is meant to serve the topic of this project, rather than the specific inquiry of the present book. In fact the problems addressed here are not treated elsewhere. To my knowledge there is no other history of the Mishnaic law of civil law and institutions; no account of the unfolding of the tractates of the division of Damages; no effort to join the materials of a given tractate, evidently produced at a particular period, to those of some other tractate at that same period. While the books listed here go over subjects relevant to the present work, I was not able to find much help in them for answering the questions under discussion in my inquiry.

My student, Mr. Martin Jaffee, kindly read and corrected the manuscript of this book, making many important suggestions. I am grateful for his assistance.

The John Simon Guggenheim Memorial Foundation awarded me yet a second fellowship, for the year 1979-1980, and Brown University supplemented that fellowship. These important sources of support enabled me to complete my history of Mishnaic law far more expeditiously than I otherwise should have been able to do. I express my cordial thanks to both the Guggenheim Foundation and Brown University.

I call attention to a textbook which I have written to present to students an account of the more important exegetical methods on which this history of Mishnaic law is based. This book, *Form-Analysis and Exegesis: A Fresh Approach to the Interpretation of Mishnah. With Special Reference to Mishnah-tractate Makhshirin* (Minneapolis, 1980: The University of Minnesota Press), uses Mishnah-tractate Makhshirin as a case-study. Reviewing the principal exercises of interpretation and reconstruction given in my *History of the Mishnaic Law of Purities. XVII. Makhshirin* (Leiden, 1977: E. J. Brill), I present an account and explanation of how the work is done and the reasoning behind it. I have done the same sort of reprise for students in *There We Sat Down. Talmudic Judaism in the Making* (Second Edition. N.Y., 1978: KTAV Publishing House), for *A History of the Jews in Babylonia* (Leiden, 1965-1970: E. J. Brill); and in *From Politics to Piety. The Emergence of Pharisaic Judaism* (Second Edition. N.Y., 1979: KTAV Publishing House), for *The Rabbinic Traditions about the Pharisees before 70* (Leiden, 1971: E. J. Brill) I-III. In this way I hope to introduce the coming generation to the methods and to some of the results of these more sizable works.

In the appendix to this volume, I have added an extended statement on method, which began as a plenary address for the Society of Biblical Literature national meeting in November, 1979, and to which I have added footnotes. These serve as an introductory bibliography to the books (but not to the very numerous articles) of the doctoral alumni of Brown University's graduate program in History of Religions: Judaism of the Department of Religious Studies. Since this volume brings to an end a project which began ten years ago and which to begin with laid forth and then fully carried out a single methodological program of research, I think the history of the work should be outlined, if only very briefly, and the methods, in very broad and general outline as well, should be made articulate and explained. I also allude in public for the first time to the difficulties which have confronted my school in its formation and earliest expression.

This book is completed on the sixth *yarhzeit* of my late father-in-law, Mr. Max Richter of Paterson, New Jersey, and Jerusalem. So far as time is supposed to dull the sense of loss, he might as well have died yesterday.

It is not possible to put into words my feelings as I write these concluding words to my final volume of my history of the law of Mishnah. I began the work. I finished the work. Thank God.

J.N.

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