

A Living Tree

THE ROOTS AND GROWTH OF JEWISH LAW

ELLIOT N. DORFF and ARTHUR ROSETT

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I. The Biblical Period [c. 1700 B.C.E.–150 B.C.E.]

a. *The Patriarchal Period* [c. 1700–c. 1600 B.C.E.] The biblical stories of Abraham, Isaac, and Jacob reflect a time when the ancestors of the Jews, called the Hebrews, moved from Mesopotamia (modern Iraq and Iran) to Canaan (Palestine), where they gained the name "Israelites" (meaning Children of Israel, Israel being another name for Jacob).

b. *Egypt and the Exodus* [c. 1600–1290 B.C.E.] The Israelites lived in Egypt, first as a favored group and then as slaves. They left Egypt about 1290 B.C.E. and wandered in the wilderness stopping at Mount Sinai, where God's will was revealed in the most important theophany of the Jewish faith.

c. *The Conquest of the Land: Joshua, the Judges, Saul, David, and Solomon* (1290–922 B.C.E.) The Israelites wandered through the Sinai and trans-Jordan, crossing into Canaan at Jericho. During the next three centuries they gradually gained possession of all of modern-day Israel and a section of modern Jordan. There were intermittent periods of unity and disunity, war and peace. Under King David [c. 1000–961 B.C.E.] and King Solomon [c. 961–922 B.C.E.] their territory expanded considerably, from the Euphrates River in modern Syria to the Brook of Egypt in the northwestern corner of the Sinai Peninsula, including modern Israel, Jordan, and Gaza, and parts of Lebanon, Syria, and Egypt.

d. *The First Temple Period* (c. 922–586 B.C.E.) King Solomon built the First Temple, which was not only a place of worship, but the center of government and commerce for his whole realm. After his death, however, Solomon's heirs fought over the right of succession, and from c. 922 B.C.E. until 722 B.C.E. the Israelites were split into two kingdoms, a northern kingdom (Israel or Ephraim) consisting of ten of the twelve tribes, and a southern kingdom (Judah) consisting of two tribes. In 722 the Assyrians, from the northern Tigris River valley, conquered Samaria, the capital of the northern kingdom, and its population was dispersed. From then on, the ten northern tribes lost their identity and became, as they were later known, "the Ten Lost Tribes." The Assyrians continued south and besieged Jerusalem, capital of the southern kingdom, but did not destroy it. The Jews (that is, citizens of the Kingdom of Judah) continued on as a vassal territory subject to Assyria from 722 to 612, when the Babylonians (from the southern Tigris and Euphrates River valleys) conquered the Assyrian capital of Nineveh. The Babylonians took over Judah (despite an attempt led by Egypt to prevent them from doing so) and ruled it until 586, when they destroyed the Temple (and, with it, the First Commonwealth) in response to a revolt. The First Temple Period was the age of the prophets

C. WHO ARE THE JEWS?

To understand Jewish law, it is important to have a rudimentary knowledge of the whereabouts and activities of the Jews during the major epochs of their past. The Jewish tradition has its own system for numbering years from the date of the creation of the world, under which the first half of 1987 falls in the year 5747. For most secular purposes Jews conform to the system of years used by their Christian neighbors. Those years before Christ (B.C.) are referred to as years Before the Common Era (B.C.E.), and those after Christ (A.D.) are referred to as years of the Common Era (C.E.).

The following provides an overview. Other relevant historical information is included throughout the book to help the reader understand the legal developments of a period. Reference to a globe or map of Europe and the Middle East will make the following overview more understandable and memorable.

and kings, including Elijah, Elisha, and King Ahab (mid-ninth century), Amos (c. 750) and Isaiah of Jerusalem (or First Isaiah, c. 742–701 B.C.E.), and King Josiah and Jeremiah (c. 622–586 B.C.E.)

e. *The Babylonian Exile* (586–516 B.C.E.) The Babylonians took most of the inhabitants of Jerusalem to Babylonia. There the Jews dreamed of returning to Israel, and prophets like Ezekiel and Second Isaiah assured the people that they would return. The Persians (from modern Iran) conquered the Babylonians in 539. They permitted the Jews to return to Jerusalem, and in 516 some did under the leadership of Haggai and Zekhariah. They rebuilt the Temple and founded the Second Jewish Commonwealth in Israel. Many Jews remained in Persia because they were treated well there. In fact, from 586 B.C.E. to about 1050 C.E., a period of over 1600 years, a Jewish community thrived in that area of the world.

2. *The Second Temple Period* (516 B.C.E.–70 C.E.) (also known as the Inter-Testamental Period)

In this period Jews lived primarily in Israel and Persia, although there were Jewish communities throughout the Mediterranean Basin and the Middle East from this point in history to the present. A second attempt to bring significant numbers of Jews back to Israel was organized under Ezra and Nehemiah in the middle of the fifth century B.C.E. Ezra is credited with establishing the official version of the Torah and appointing a group of elders to be its official interpreters. This body, known at different periods as the Great Assembly, the Gerousia, and the Sanhedrin, served as the supreme judicial authority for the Jewish people. Its decisions were handed down orally from one generation to the next. From the fifth through the second centuries B.C.E. Hellenistic influence was very strong as Israel was alternately ruled by the Seleucids (Syrian Greeks) and the Ptolemies (Egyptian Greeks). This is reflected in some of the Wisdom literature that makes up the last part of the Hebrew Bible (Proverbs, Job, Ecclesiastes), and even more strongly in some of the books of the Apocrypha (the outside books), which Jews produced but which were not ultimately accepted as part of the Jewish Bible. The Apocrypha also includes the books of Maccabees, which tell the tale of the Jewish revolt against Greek rule in 165 B.C.E. (the Hanukkah story) and the resultant reign of Jewish kings in Israel for close to a century. After that time, the Romans gained control of Israel. That is the regime reflected in the New Testament. In response to a revolt (66–70 C.E.), the Romans destroyed the Second Temple in 70, bringing this period to a close. During this time there were a number of Jewish sects, with varying interpretations and practices;

only in the next period did Judaism become fixed in roughly the form that it is now known.

3. *The Mishnaic (Tannaitic) Period* (70–220 C.E.)

The destruction of the Second Temple was a traumatic event for the Jewish people, for the center of Jewish political and religious life was demolished. A series of political and religious persecutions, coupled with difficult economic conditions, made life even worse for the Jews during the next century and a half. Consequently, during the second century a significant number of Jews migrated from Israel to Persia, where they joined a relatively well-off Jewish community. The difficult conditions also prompted the rabbis to organize and consolidate the oral traditions. The most important collection is the Mishnah, which gained authority second only to the Torah almost as soon as it was published (c. 220 C.E.).

4. *The Talmudic (Amoraic) Period* (220–500 C.E.)

During this period a large group of Jews lived in Persia and a significant number continued to live in Israel. When Rome became Christian in the fourth century, increasing legal restrictions were placed upon the Jews in Israel living under Roman and Byzantine rule. Consequently, by about 400 the Israeli rabbis consolidated and edited their traditions in what became known as the Palestinian (or Jerusalem, or Western) Talmud. In Persia the Jews enjoyed relative religious freedom and autonomy during most of this period. Jewish legal and cultural institutions flourished. Following a period of persecutions between 455 and 475, however, the rabbis in Persia felt the need to edit their interpretations and applications of the Mishnah in what became known as the Babylonian Talmud. The Babylonians ruled the Jews for only a brief period of Jewish history—605–539 B.C.E.—but it was they who brought Jews in exile to the Tigris-Euphrates basin. Consequently from then on Jews commonly called that area of the world “Babylonia,” no matter who ruled it. Hence the name is “Babylonian Talmud,” even though the text was produced between 200 and 500 C.E., when the Babylonians were long gone.

5. *The Period of the Saboraim* (500–650 C.E.)

During this period the sages living in Persia added comments and notes to the text of the Babylonian Talmud as Jews continued to live in a relatively stable and tolerant environment. Jews living in Israel were under the rule of the Byzantines, and the legal restrictions against

them grew increasingly harsh throughout the fifth and sixth centuries, culminating in a series of anti-Jewish riots between 550 and 650. There are virtually no remains of Israeli legal activity from this time, possibly as a result of the suppression of studying the Mishnah that began with the decree of Emperor Justinian I in 553.

6. *The Geonic Period* (650–1050)

Jews living in southern Europe and Asia Minor during this period were under the often intolerant rule of Christian kings and clerics, but most Jews lived in the Muslim Arab realm, including those in Israel, North Africa, and Babylonia. Although there were periods and places in which Jews suffered persecution, especially toward the end of this period, by and large Jewish communal and cultural life flourished under Arab rule. The universally recognized centers of Jewish life at this time were the Jewish law schools in Sura and Pumbeditha in Babylonia. The heads of those law schools, called Geonim, were consulted by Jews throughout the world on matters of Jewish law. They answered in response—that is, responses to the questions they were asked. That genre of legal literature became the primary vehicle for the operation of Jewish law from that time to today. The official head of the Jewish community was a man appointed by the government, known as the Exilarch (head of the community in exile from Israel) as it had been during Persian times. The Israeli community attempted to reassert its authority during the ninth century by reviving the system of fixing the calendar through sightings of the moon taken in Jerusalem, but the Geonim successfully asserted the preeminence of their own authority over that of the Israeli leaders. A longer and harder battle had to be waged against the Karaites, especially during the ninth and tenth centuries. The Karaites denied the authority of rabbinic interpretations of the Torah from the time of Ezra to their own; they claimed instead that Jews should live by the written Torah alone. Rabbinic Judaism ultimately emerged triumphant, but only after a long, hard fight. Interest among Jews in the Hebrew language flourished during this period, when a number of Hebrew grammars and a large body of Hebrew liturgical poetry were produced.

7. *The Period of Posekim and Rishonim* (1000–1550)

The capital of the Umayyid Caliphate (661–750) was in Damascus, and its successor, the Abbasid Caliphate (750–1258), ruled from Baghdad. As a result, the cultural and economic center during the first centuries of Muslim rule was indisputably in the east, and the Jewish communities of Iraq (Babylonia) were the center of the Jewish world

too. Even so, the wave of Muslim conquest across North Africa and on into Spain in the seventh, eighth, and ninth centuries brought with it the migration of some Jews to the western Mediterranean, where they took advantage of the new economic opportunities the unified realm provided.

By the eleventh century, however, it appears that most of the world's Jews lived in the Muslim and Christian lands of the west. Increasing political strife and civil disorder in Iraq began in the late ninth century. This increased the flow of Jews to the west. The Fatimid counter-Caliphate (909–1171) in North Africa and their successors, the Ayyubids (1171–1250), ignored the Koran's discriminatory tariffs against nonbelievers and even permitted Jews to hold high political office. These regimes were open and aggressive in their economic activities. They fostered a tolerant, humanistic culture. Under such conditions Jewish communities flourished. The Jewish community of Qayrawan (in modern Tunisia) was especially well known for its scholarship, and its counterpart in Fustat, Egypt, gained prominence in size, wealth, and political influence. Jews in Muslim, and later Christian, Spain of the tenth and eleventh centuries enjoyed a vertiable golden age, combining economic and political security with rich cultural creativity.

Parallel developments in Christian western Europe promoted Jewish migration there. Beginning with Charles the Great (Charlemagne, crowned in 800) and his dynasty, and continuing with the Capetian and Ottonian dynasties, Christian emperors in France and Germany ignored the rules of the Church and extended liberal economic charters to Jewish tradesmen, granting them freedom of worship and economic advantages if they would help establish the commercial structure of their empires. The number of Jews in most European communities would reach only several dozen families, in comparison to the tens of thousands of persons in the largest Jewish communities under the Muslims, but the cultural productivity of the Europeans earned them a place in Jewish memory far beyond what their numbers would warrant.

From the eleventh through the fourteenth centuries, then, most Jews lived in the western Mediterranean basin and in western Europe under the feudal systems prevailing in both the Muslim and Christian countries. The Jews had been scattered before, but now, with the decline of both the Muslim and Jewish centers of power in Iraq, there was no single place in the world which was the recognized center for Jewish learning and the authoritative forum for decisions on matters of Jewish practice. Consequently, rabbis recognized the need for written commentaries on the Torah and Talmud and for codes summarizing

the requirements of Jewish law so that Jews living in far-flung communities could continue the tradition. The commentary of Rashi (Rabbi Shlomo Yitzhaki, 1040–1105) and the codes of Maimonides (1135–1204, the *Mishneh Torah*) and Jacob ben Asher (1270–1343, the *Tur*) became especially popular. Because there was no central authority, various community customs became more important during this period and ultimately entered the codes and precedents that were produced by rabbis all over the world. A number of Jewish communities also issued *takkanot*, that is, legislative enactments designed to regulate the practices of the members of those communities. This period ended with the writing of the *Shulhan Arukh*, a code that gained more authority than any other because it recorded the practices of Jews living in the Mediterranean Basin and the Middle East (the *Sephardim*) and also included notes indicating the different practices of Jews living in France and Germany (the *Ashkenazim*). Jews were not allowed to own land or engage in agriculture in many Christian countries, and so most earned a living through business and international trade, leading to the stereotypes that pervade Christian literature during the last thousand years. This was the period of the Crusades and the Inquisition, during which Jews were murdered in pogroms, forced to engage in staged disputations with Christian authorities, and ultimately expelled from most of the countries of Western Europe.

8. *The Period of the Aharonim* (1550–present)

Expelled from Western Europe, Jews moved east to the central and eastern sections of Europe and the Mediterranean Basin. There they found themselves in the uncomfortable position of being middlemen between the landowners and the peasants, and they often were the objects of the ire of the latter group toward the former. The *Shulhan Arukh* was generally accepted as the standard of Jewish practice, but the many commentaries and glosses written about it effectively continued the diversity in Jewish practice in communities throughout the world. In the nineteenth and twentieth centuries Jews living in Western and Central Europe and in America were strongly influenced by the ideologies and politics of the Enlightenment. Yet, until World War II, most Jews lived under authoritarian regimes in Eastern Europe and Muslim countries, where conditions remained virtually the same as in medieval times. The decimation of European Jewry by Nazi Germany, the emergence of the American Jewish community as the largest in the world, and the establishment of the State of Israel have radically changed Jewish cultural, political, and religious life in the second half of the twentieth century.

Those who would delve into Jewish history deeper will find the following books helpful: Robert M. Seltzer, *Jewish People, Jewish Thought: The Jewish Experience in History* (New York: Macmillan, 1980)—a readable, clearly written treatment with considerable attention to Jewish intellectual history as well as Jewish social history, with chronological tables and maps; Haim Hillel Ben-Sasson, ed., *A History of the Jewish People* (Cambridge: Harvard University Press, 1976)—a compilation of extensive, thorough monographs on Jewish social history; Leo W. Schwarz, ed., *Great Ages and Ideas of the Jewish People* (New York: Modern Library, 1956)—six essays by distinguished historians on the ideational development of the major periods of Jewish history; and Louis Finkelstein, ed., *The Jews: Their History, Culture, and Religion*, 4th ed. (New York: Schocken, 1949, 1970)—a rich collection of essays on many aspects of Jewish history, culture, and religion.

D. COMMON MISCONCEPTIONS ABOUT JEWISH LAW

Jews and Christians often labor under a number of misconceptions about Jewish law, and it is important to dispel some of the more common ones at the very beginning.

Contemporary Jews come into contact with Jewish law primarily in ritual and family matters. They know, for example, that there are laws concerning diet (the rules of kosher food), the Sabbaths and festivals, and life-cycle events, including birth, adolescence (Bar or Bat Mitzvah), marriage, divorce, and death. As important as those rules are, Jewish law is not limited to them. Rabbinic courts throughout the ages have also dealt with the whole range of civil and criminal matters, including contracts, bailments, landlord-tenant disputes, land law, inheritance, bankruptcy, fraud, theft, assault, and murder. Consequently, when rabbis describe Judaism as a way of life, they are not just engaging in poetic flourish; they are accurately describing a system that embraces all of life. As already indicated, remedies for personal injuries has been chosen as the topic for the first unit to emphasize this point, but it is only one example of the topics that Jewish law treats.

Misunderstandings about the content of Jewish law are fairly easy to correct, but the misconceptions that Jews and Christians have about its methodology and effectiveness are much harder to uproot. Jewish law is not equivalent to biblical law, and it did not end with the close of the biblical period or the advent of Jesus. It is based on the Bible, but it has developed continuously since then through interpretation, legislation, and custom, and for most of Jewish history it has been the ma-

for, if not the exclusive, governing authority for Jews. Jewish law is thus a prime example of how law develops. Methods to apply and adapt the law were built into its corpus from the time of the Bible on. The rabbis of the classical tradition claimed that their interpretations were the new form of God's revelation, replacing visions and voices. Those features of Jewish law proclaim loudly that it is intended to be a law for all generations, and so Jews have lived it.

The fact that legal interpretation represents the primary form of God's revelation available in our time means that studying the law is a holy act. Even God, according to the Jewish tradition, spends a quarter of each day studying Jewish law, and He spends another quarter instructing school children (*Avodah Zarah* 3b). A legend relates that when Moses visited God in His heavenly abode, he found Him lovingly placing elaborate crowns on the Hebrew letters of the Torah so that later generations, including Akiba and his rabbinic colleagues, would be able to "expound upon each dot heaps and heaps of laws" (*Menzhot* 29b). For the Jewish tradition, the law is not just a convenient mechanism for running society. It is the word and occupation of God Himself, and it embraces all that is valuable and worthwhile in life. Studying law is to be prized over many other important pursuits, for it encompasses them all.

Shabbat 127a

Performance of these commands brings an immediate reward as well as bliss in the time to come: honoring one's parents, deeds of loving kindness, prompt attendance, morning and evening, at the house of study; hospitality to strangers; visiting the sick, dowering the needy bride, caring for the dead; devotion in prayer; and making peace among people. But the study of Torah is equivalent to them all.

Jewish law is therefore not narrowly ritualistic, and it is not archaic either. On the contrary, Jewish tradition compares Jewish law to a living tree. As the Torah, the sacred scroll of the Five Books of Moses, is returned to the ark after being read in synagogue services, the liturgy quotes from the biblical book of Proverbs (4:2, 3:18, 17):

I give you good instruction, never forsake My Torah.

It is a tree of life for those who hold fast to it, and those who uphold it are happy.

Its ways are pleasant, and all its paths are peace.

The tree of Jewish law certainly has many tangled branches—so many that one sometimes wonders how they can all be part of the same organism. Some parts of the tree of tradition thin out over time, while

others flourish and broaden to suit the needs at hand. Some readers may doubt whether the twisted shapes, bent by time and the diversity of human husbandry, still possess the regenerative power of a living tree. The doubters should look hard at the tips of the branches, for there they will see new fruit just now forming.