CHAPTER SIXTEEN

NAVIGATING THE ANOMALOUS:
NON-JEWS AT THE INTERSECTION OF
EARLY RABBINIC LAW AND NARRATIVE

1. Introduction

Rabbinic legal writings are preoccupied not simply with defining categories and sorting their contents, but with navigating the brackish waters between them—the anomalous areas where boundaries either overlap or leave gaps. Such human discourse facilitates the necessary yet anxious commerce across the permeability of such categorical boundaries: between holy and profane, pure and impure, male and female, land of Israel and the Diaspora, people of Israel and the nations. Here I wish to focus on the last pair, in particular, on the problem of the adjudication of civil claims between Jew and Gentile, each of whom inhabits a different, but intersecting nomian world. Even more particularly, I shall examine the “double standard” by which the Gentile’s goring ox and his lost or robbed property are treated when they fall within the Jewish nomos. To those who might think that I have whittled my topic down too much, let me quote Maimonides who, in commenting on just one mishnaic passage central to this subtopic, says, “Discussion of this subject would require a separate book.” Indeed, the volume of traditional treatment of this topic is so great that I will have to omit from consideration not only most of what Maimonides has to say, but many of the Babylonian talmudic texts and the subsequent history of commentary and codification. Here I shall focus my attention on the earlier, formative Palestinian rabbincic texts that lie at the base of that subsequent legal history of interpretation.


Although a convenient excuse, space constraints alone do not dictate my strategy of concentrating on the earlier texts. Past treatments have tended to subsume these prior formulations under later, more systematic codifications for two interconnected reasons. First, the earlier formulations often appear incommensurate with one another, being more ambivalent in their treatment of the Gentile and hence more difficult to domesticate to a unified Jewish view of the non-Jew, or even to a linear progression toward the same. Second, many of these earlier formulations, in their “discriminatory” treatment of the Gentile, are embarrassingly foreign to the more “liberal” sensibilities of later interpreters. We must attend to this polysemic and problematic navigation of the anomalous position of the non-Jew in Jewish law in its own historical and ideational right.3

Legal discourse is not simply the linear application of fixed rules to changing cases and circumstances, but the dynamic interplay of intersecting lines of categorical identity and difference that continually reconfigure a culture’s sense of solidarity with itself and separation from others. To begin with, Israel is uniquely circumscribed by its reception and practice of the divinely authorized if not authored rules of Torah, whereby it is set apart from other peoples. The internal government of Israel’s collective life by the words of Torah aligns it with a sacred historical scheme to which other peoples are ancillary at best. According to this conception, Israel inhabits a nomian world exclusive of other peoples.


3 For examples of attempts at explaining away this embarrassing otherness, see below, n. 39.