THE MISHNAH IN ROMAN AND CHRISTIAN CONTEXTS

JACOB NEUSNER

Bard College

The outmost context of comparison brings the Mishnah into juxtaposition with Roman legal codification, on the one side, and with Christian encounters with the law of Judaism, on the other. In the former exercise we ask a simple question: is the Mishnah like, or unlike, its Roman counterparts? In the latter we enter into the substance of the debate on the norms of Scripture conducted between Christianity and Judaism, now with special attention to the Mishnah’s (and the Tosefta’s) reading of the Sabbath commandments of Scripture and the interpretation of the same commandments set forth by Jesus.

I. THE MISHNAH IN THE CONTEXT OF ROMAN LEGAL CODIFICATION OF THE SECOND CENTURY

Since critics have dismissed out of hand my entire systematic representation of the Mishnah as the foundation-document, alongside Scripture, of Judaism, and since they have insisted it is nothing more than a law code like other law codes of its time and place, I decided to look into the matter further. It is commonly alleged that the Mishnah fits into the context of Roman legal codification of the second century. Is this the fact?

The answer matters, because it is further inferred that because the Mishnah (supposedly) finds its place within the framework of Roman legal codification of its time and place, it is to be read as a law code like other law codes, in the genre of law codes. It is not to be seen as I see it, that is, in its own terms and encompassing framework. I maintain that the Mishnah is sui generis. Others place it into the genre of law code. A genre is not defined by a single exemplar. The genre of law code is amply set forth by the Roman codification-process of the second century. And that brings us to the issue at hand. Is the Mishnah in general—process, premise, structure—
sufficiently like Roman legal codification to sustain comparison, hence also contrast, as part of a single genre? Or have the points of intersection and comparison been misconstrued or flagrantly misrepresented? Readers will answer for themselves.

The questions then are these: Is it true that the Mishnah fits into the context of Roman legal codification in the second century? Must or may we assign the Mishnah to the genre, law code, as defined by Roman law codes of the same century? To find out, I consulted a classicist for an account of Roman legal codification of the second century.¹ The result is partial but one-sided. Stephen A. Stertz touches on a variety of issues that pertain directly to problems of legal codification but that scarcely intersect in character or in contents with the Mishnah.² But at five points his account of Roman legal codification in the age in which the Mishnah took shape does afford perspective upon the Mishnah. Specifically, he treats five questions that may be addressed equally to the Mishnah and to the Roman process of codification. These points at which the Mishnah intersects with its Roman counterpart, not in detail but in large proportions, allow us to determine whether or not the Mishnah falls into the genre, legal code, as defined in its time and place, the Roman Empire of the second century.

Concerning myself not with details of comparing a particular Roman law with a particular Mishnah-law, but rather with the large and fundamental questions of literary redaction, I systematically compare the Mishnah with the Roman counterpart as Stertz portrays matters. I italicize the main pertinent result of Stertz’s account of Roman legal codification, then comment on the Mishnah’s counterpart, if any. At only one point does the Mishnah intersect with its Roman counterpart: it deals with some of the same subjects. But the Mishnah deals with a great many subjects that the Roman codes of its day ignore.

¹ Steven Stertz, “Roman Legal Codification in the Second Century,” presented as an appendix in the following chapter.

² I also consulted Catherine Hezser, “The Codification of Legal Knowledge in Late Antiquity. The Talmud Yerushalmi and Roman Law Codes,” in Peter Schaefer, ed., The Talmud Yerushalmi and Graeco-Roman Culture, pp. 581-641. But the Mishnah in particular is not at issue in that fine paper.